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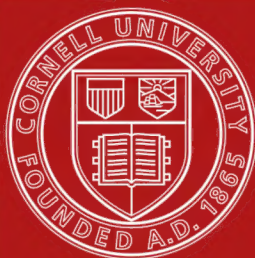
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DIVISION OF INTERNATIONAL LAW

Pamphlet No. 26

OPINIONS OF ATTORNEYS GENERAL, DECISIONS OF FEDERAL COURTS, AND DIPLOMATIC CORRESPONDENCE RESPECTING THE TREATIES OF 1785, 1799 AND 1828 BETWEEN THE UNITED STATES AND PRUSSIA.

PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.

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Prefatory Note

On January 31, 1917, the German government informed the United States that

"from February 1, 1917, all sea traffic will be stopped with every available weapon and without further notice in the following blockade zones [describing them in detail] around Great Britain France, Italy and in the Eastern Mediterranean."

On the third day of February, the President of the United States addressed both Houses of Congress in joint session, and, after stating in detail the relations between Germany and the United States and the apparent intention on the part of the German government to deprive the United States of the rights which neutrals possessed upon the high seas, he informed the Congress that he had

"directed the Secretary of State to announce to His Excellency the German Ambassador that all diplomatic relations between the United States and the German Empire are severed, and that the American Ambassador at Berlin will immediately be withdrawn; and, in accordance with this decision, to hand to His Excellency his passports."

The passports were accordingly handed to His Excellency the German Ambassador the same day, and diplomatic relations between the two countries were thus severed.

There are three treaties which in whole or in part in the opinion of the German Empire and of the United States affect their international relations. The treaties in question are: First, the treaty of amity and commerce concluded between Prussia and the United States of America on September 10, 1785; second, the treaty of amity and commerce concluded between Prussia and the United States of America on July 11, 1799; and, third, the treaty of commerce and navigation concluded between Prussia and the United States of America on May 1, 1828.

These treaties have been held by the governments of the contracting parties to apply not only to Prussia, but to the North German Confederation, of which Prussia was the leading member, and also to the

German Empire, of which the King of Prussia is the German Emperor.

The opinions of the Attorneys General of the United States, the decisions of Federal Courts and the correspondence between the German Empire on the one hand and the United States on the other, relating to the nature and binding effect of the treaties are here collected from official sources and issued in the present pamphlet. Although some parts of the subject-matter in these opinions, decisions and correspondence may not seem to be strictly necessary to the purposes of this pamphlet, it has been deemed advisable to print them in full and not to take any liberties with the original texts.

JAMES BROWN SCOTT,
*Director of the Division of
International Law*

WASHINGTON, D. C.,
February 28, 1917.

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OPINIONS OF ATTORNEYS GENERAL, DECISIONS OF FEDERAL
COURTS AND DIPLOMATIC CORRESPONDENCE RESPECTING
THE TREATIES OF 1785, 1799 AND 1828 BETWEEN THE UNITED
STATES AND PRUSSIA.

Texts of Treaties between the United States and Prussia

TREATY OF 1785¹

*Concluded September 10, 1785; Ratified by the Congress May 17, 1786;
Ratifications Exchanged October, 1786*

His Majesty the King of Prussia and the United States of America, desiring to fix, in a permanent and equitable manner, the rules to be observed in the intercourse and commerce they desire to establish between their respective countries. His Majesty and the United States have judged that the said end cannot be better obtained than by taking the most perfect equality and reciprocity for the basis of their agreement.

With this view, His Majesty the King of Prussia has nominated and constituted as his Plenipotentiary, the Baron Frederick William de Thulemeier, his Privy Counsellor of Embassy, and Envoy Extraordinary with their High Mightinesses the States-General of the United Netherlands; and the United States have, on their part, given full powers to John Adams, Esquire, late one of their Ministers Plenipotentiary for negotiating a peace, heretofore a Delegate in Congress from the State of Massachusetts, and Chief Justice of the same, and now Minister Plenipotentiary of the United States with His Britannic Majesty; Doctor Benjamin Franklin, late Minister Plenipotentiary at the Court of Versailles, and another of their Ministers Plenipotentiary for negotiating a peace; and Thomas Jefferson, heretofore a Delegate in Congress from the State of Virginia, and Governor of the said State, and now Minister Plenipotentiary of the United States at the

¹ 18 Stat. L. 378; Malloy's *Treaties*, etc., Vol. 2, p. 1477.

NOTE: This treaty expired by its own limitations October, 1796, but Article XII was revived by Article XII of the treaty of 1828.

Court of His Most Christian Majesty; which respective Plenipotentiaries, after having exchanged their full powers, and on mature deliberation, have concluded, settled, and signed the following articles:

ARTICLE I

There shall be a firm, inviolable, and universal peace and sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America and their citizens on the other, without exception of persons or places.

ARTICLE II

The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay within the said United States no other or greater duties, charges, or fees whatsoever, than the most favoured nations are or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; submitting themselves nevertheless to the laws and usages there established, and to which are submitted the citizens of the United States, and the citizens and subjects of the most favoured nations.

ARTICLE III

In like manner the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay in the dominions of his said Majesty no other or greater duties, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; submitting themselves nevertheless to the laws and usages there established, and to which are submitted the subjects of His Majesty the King of Prussia, and the subjects and citizens of the most favoured nations.

ARTICLE IV

More especially each party shall have a right to carry their own produce, manufactures, and merchandize in their own or any other vessels to any parts of the dominions of the other, where it shall be

lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only as are or shall be paid by the most favoured nation. Nevertheless, the King of Prussia and the United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandise to the vessels of the country of which it is the growth or manufacture, to establish against such nations retaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandise whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties shall not import nor export the merchandise prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

ARTICLE V

The merchants, commanders of vessels, or other subjects or citizens of either party, shall not within the ports of jurisdiction of the other be forced to unload any sort of merchandize into any other vessels, nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE VI

That the vessels of either party loading within the ports or jurisdiction of the other may not be uselessly harassed or detained, it is agreed that all examinations of goods required by the laws shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is; but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

ARTICLE VII

Each party shall endeavor, by all the means of their power, to protect and *desend* [defend] all vessels and other effects belonging to the

citizens or subjects of the other, which shall be within the extent of their jurisdiction, by sea or by land; and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects which shall be taken from them within the extent of their said jurisdiction.

ARTICLE VIII

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage without molestation, and without being obliged to render account of their cargo, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments for the safety and convenience of navigators, which duties, charges, and fees shall be the same, and shall be paid on the same footing as in the case of subjects or citizens of the country where they are established.

ARTICLE IX

When any vessel of either party shall be wrecked, foundered, or otherwise damaged on the coasts, or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of their cargo be unladed, they shall pay no duties, charges, or fees on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished, with respect to the subjects and citizens of the two contracting parties.

ARTICLE X

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof either by themselves or by others acting for them, and dispose of the

same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods, and for so long a time as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proce[e]ds without molestation, and exempt from all rights of detraction on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published or hereafter to be published, by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XI

The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, without being liable to molestation in that respect for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying-grounds or other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XII¹

If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; and the same freedom shall

¹Revived by treaty of 1828.

be extended to persons who shall be on board a free vessel, although they should be enemies to the other party, unless they be soldiers in actual service of such enemy.

ARTICLE XIII

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandize heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors: And it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

ARTICLE XIV

And in the same case where one of the parties is engaged in war with another Power, that the vessels of the neutral party may be readily and certainly known, it is agreed that they shall be provided with sea-letters or passports, which shall express the name, the property, and burthen of the vessel, as also the name and dwelling of the master; which passports shall be made out in good and due forms (to be settled by conventions between the parties whenever occasion shall require), shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the said vessel be under convoy of one or more vessels of war belonging to the neutral party, the simple declaration of the

officer commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

ARTICLE XV

And to prevent entirely all disorder and violence in such cases, it is stipulated, that when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, public or private, of the other party, such vessel of war shall not approach within cannon-shot of the said neutral vessel, nor send more than two or three men in their boat on board the same, to examine her sea-letters or passports. And all persons belonging to any vessel of war, public or private, who shall molest or injure in any manner whatever the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE XVI

It is agreed that the subjects or citizens of each of the contracting parties, their vessels and effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition, or other public or private purpose whatsoever. And in all cases of seizure, detention, or arrests for debts contracted or offences committed by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE XVII

If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by that other, they shall be brought into some port of one of the parties, and delivered into the custody of the officers of that port, in order to be restored entire to the true proprietor, as soon as due proof shall be made concerning the property thereof.

ARTICLE XVIII

If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accident, shall take refuge with their vessels

or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with all refreshments, provisions, and other things necessary for their sustenance, health, and accommodation, and for the repair of their vessels.

ARTICLE XIX

The vessels of war, public and private, of both parties, shall carry freely wheresoever they please the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to shew. But no vessel which shall have made prizes on the subjects of His Most Christian Majesty the King of France shall have a right of asylum in the ports or havens of the said United States; and if any such be forced therein by tempest or dangers of the sea, they shall be obliged to depart as soon as possible, according to the tenor of the treaties existing between his said Most Christian Majesty and the said United States.

ARTICLE XX

No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war any commission or letter of marque for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate; nor shall either party hire, lend, or give any part of their naval or military force to the enemy of the other, to aid them offensively or defensively against that other.

ARTICLE XXI

If the two contracting parties should be engaged in war against a common enemy, the following points shall be observed between them:

1. If a vessel of one of the parties retaken by a privateer of the other shall not have been in possession of the enemy more than twenty-four hours, she shall be restored to the first owner for one-third of

the value of the vessel and cargo; but if she shall have been more than twenty-four hours in possession of the enemy, she shall belong wholly to the recaptor.

2. If in the same case the recapture were by a public vessel of war of the one party, restitution shall be made to the owner for one-thirtieth part of the value of the vessel and cargo, if she shall not have been in possession of the enemy more than twenty-four hours and one-tenth of the said value where she shall have been longer; which sums shall be distributed in gratuities to the recaptors.

3. The restitution in the cases aforesaid shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

4. The vessels of war, public and private, of the two parties, shall be reciprocally admitted with their prizes into the respective ports of each: but the said prizes shall not be discharged nor sold there, until their legality shall have been decided, according to the laws and regulations of States to which the captor belongs, but by the judicatures of the place into which the prize shall have been conducted.

5. It shall be free to each party to make such regulations as they shall judge necessary for the conduct of their respective vessels of war, public and private, relative to the vessels which they shall take and carry into the ports of the two parties.

ARTICLE XXII

Where the parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall upon all occasions take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE XXIII

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs and may depart freely, carrying off all their effects without molestation or hindrance. And all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, un-

armed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and *and* more general, shall be allowed to pass free and unmolested; and neither of the contracting Powers shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce.

ARTICLE XXIV

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to each other and to the world that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies, or any other parts of Asia or Africa, but that they shall be placed in some part of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts

shall not be mingled with or set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article or for any other cause, real or pretended, whatever; that each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations.

ARTICLE XXV

The two contracting parties grant to each other the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, whose functions shall be regulated by particular agreement whenever either party shall chuse to make such appointment; but if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ARTICLE XXVI

If either party shall hereafter grant to any other nation, any particular favour in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the compensation, where such nation does the same.

ARTICLE XXVII

His Majesty the King of Prussia and the United States of America agree that this treaty shall be in force during the term of ten years

from the exchange of ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war, shall continue in force until the conclusion of the treaty which shall re-establish peace; and that this treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature.

In testimony whereof the Plenipotentiaries before mentioned, have hereto subscribed their names and affixed their seals, at the places of their respective residence, and at the dates expressed under their several signatures.

[Seal] B. FRANKLIN.

Passy, July 9, 1785.

[Seal] TH: JEFFERSON.

Paris, July 28, 1785.

[Seal] JOHN ADAMS.

London, August 5, 1785.

[Seal] F. G. DE THULEMEIER.

A la Haye le 10 Septembre, 1785.

TREATY OF 1799¹

Concluded July 11, 1799; Ratification Advised by the Senate, February 18, 1800; Ratified by the President, February 19, 1800; Ratifications Exchanged June 22, 1800; Proclaimed November 4, 1800.

His Majesty the King of Prussia and the United States of America, desiring to maintain upon a stable and permanent footing the connections of good understanding which have hitherto so happily subsisted between their respective States, and for this purpose to renew the treaty of amity and commerce concluded between the two Powers at the Hague the 10th of September, 1785, for the term of ten years, His Prussian Majesty has nominated and constituted as his plenipotentiaries the Count Charles William de Finkenstein, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle, and Commander of that of St. John of Jerusalem, the Baron Philip Charles d'Alvensleben, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle, and of that of St. John of Jerusalem, and the Count

¹8 Stat. L. 162; Malloy's *Treaties*, etc., Vol. 2, p. 1486.

Christian Henry Curt de Haugwitz, his Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black Eagle and of the Red Eagle; and the President of the United States has furnished with their full powers John Quincy Adams, a citizen of the United States, and their Minister Plenipotentiary at the Court of His Prussian Majesty; which Plenipotentiaries, after having exchanged their full powers, found in good and due form, have concluded, settled, and signed the following articles:

ARTICLE I

There shall be in future, as there has been hitherto, a firm, inviolable, and universal peace and a sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America and their citizens on the other, without exception of persons or places.

ARTICLE II

The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay there no other or greater duties, charges, or fees whatsoever than the most favoured nations are or shall be obliged to pay. They shall also enjoy in navigation and commerce all the rights, privileges, and exemptions which the most favoured nation does or shall enjoy, submitting themselves, nevertheless, to the e[s]tablished laws and usages to which are submitted the citizens of the United States and the most favoured nations.

ARTICLE III

In like manner, the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay, in the dominions of his said Majesty, no other or greater duties, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy, submitting themselves, nevertheless, to the established laws and usages to which are submitted the subjects of His Majesty the King of Prussia and the subjects and the citizens of the most favoured nations.

ARTICLE IV

More especially, each party shall have a right to carry their own produce, manufactures, and merchandize, in their own, or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects and citizens of that other freely to purchase them, and thence to take the produce, manufactures, and merchandize of the other, which all the said citizens or subjects shall in like manner be free to sell to them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favoured nation. Nevertheless, His Majesty the King of Prussia and the United States respectively reserve to themselves the right, where any nation restrains the transportation of merchandize to the vessels of the country of which it is the growth or manufacture, to establish against such nation retaliating regulations; and also the right to prohibit in their respective countries the importation and exportation of all merchandize whatsoever, when reasons of state shall require it. In this case the subjects or citizens of either of the contracting parties shall not import or export the merchandize prohibited by the other. But if one of the contracting parties permits any other nation to import or export the same merchandize, the citizens or subjects of the other shall immediately enjoy the same liberty.

ARTICLE V

The merchants, commanders of vessels, or other subjects or citizens of either party, shall not, within the ports or jurisdiction of the other, be forced to unload any sort of merchandize into any other vessels nor to receive them into their own, nor to wait for their being loaded longer than they please.

ARTICLE VI

That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed, or detained, it is agreed, that all examinations of goods, required by the laws, shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally, in which case the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is, but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

ARTICLE VII

Each party shall endeavour by all the means in their power to protect and defend all vessels and other effects, belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land; and shall use all their efforts to recover and cause to be restored to the right owners their vessels and effects, which shall be taken from them within the extent of their said jurisdiction.

ARTICLE VIII

The vessels of the subjects or citizens of either party, coming on any coast belonging to the other, but not willing to enter into port, or who entering into port are not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage without molestation, and without being obliged to render account of their cargoes, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments for the safety and convenience of navigators, which duties, charges, and fees shall be the same, and shall be paid on the same footing, as in the case of subjects or citizens of the country where they are established.

ARTICLE IX

When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominions of the other, their respective citizens or subjects shall receive, as well for themselves as for their vessels and effects the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of the cargo be unladed, they shall pay no duties, charges, or fees on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished with respect to the subjects or citizens of the two contracting parties.

ARTICLE X

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testa-

ment, donation, or otherwise, and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native in like case, untill the lawfull owner may take measures for receiving them. And if question should arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person, holding real estate, within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds, without molestation, and exempt from all rights of detraction on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published or hereafter to be published by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XI

The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, and no person shall be molested in that respect for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying-grounds, or other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XII

Experience having proved, that the principle adopted in the twelfth article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree, either separately between themselves or jointly with other Powers alike interested, to

concert with the great maritime Powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval either of the contracting parties should be engaged in a war to which the other should remain neutral, the ships of war and privateers of the belligerent Power shall conduct themselves towards the merchant vessels of the neutral Power as favourably as the course of the war then existing may permit, observing the principles and rules of the law of nations generally acknowledged.

ARTICLE XIII

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandize of contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

All cannons, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, muskets, flints, matches, powder, saltpeter, sulphur, cuirasses, pikes, swords, belts, cartouch boxes, saddles and bridles, beyond the quantity necessary for the use of the ship, or beyond that which every man serving on board the vessel, or passenger, ought to have; and in general whatever is comprised under the denomination of arms and

military stores, of what description soever, shall be deemed objects of contraband.

ARTICLE XIV

To ensure to the vessels of the two contracting parties the advantage of being readily and certainly known in time of war, it is agreed that they shall be provided with the sea-letters and documents hereafter specified :

1. A passport, expressing the name, the property, and the burthen the vessel, as also the name and dwelling of the master, which passport shall be made out in good and due form, shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the vessel be under convoy of one or more vessels of war, belonging to the neutral party, the simple declaration of the officer commanding the convoy, that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

2. A charter-party, that is to say, the contract passed for the freight of the whole vessel, or the bills of lading given for the cargo in detail.

3. The list of the ship's company, containing an indication by name and in detail of the persons composing the crew of the vessel. These documents shall always be authenticated according to the forms established at the place from which the vessel shall have sailed.

As their production ought to be exacted only when one of the contracting parties shall be at war, and as their exhibition ought to have no other object than to prove the neutrality of the vessel, its cargo, and company, they shall not be deemed absolutely necessary on board such vessels belonging to the neutral party as shall have sailed from its ports before or within three months after the Government shall have been informed of the state of war in which the belligerent party shall be engaged. In the interval, in default of these specific documents, the neutrality of the vessel may be established by such other evidence as the tribunals authorised to judge of the case may deem sufficient.

ARTICLE XV

And to prevent entirely all disorder and violence in such cases, it is stipulated that, when the vessels of the neutral party, sailing without convoy, shall be met by any vessels of war, public or private, of the

other party, such vessel of war shall not send more than two or three men in their boat on board the said neutral vessel to examine her passports and documents. And all persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever, the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ARTICLE XVI

In times of war, or in cases of urgent necessity, when either of the contracting parties shall be obliged to lay a general embargo, either in all its ports, or in certain particular places, the vessels of the other party shall be subject to this measure, upon the same footing as those of the most favoured nations, but without having the right to claim the exemption in their favour stipulated in the sixteenth article of the former treaty of 1785. But on the other hand, the proprietors of the vessels which shall have been detained, whether for some military expedition, or for what other use soever, shall obtain from the Government that shall have employed them an equitable indemnity, as well for the freight as for the loss occasioned by the delay. And furthermore, in all cases of seizure, detention, or arrest, for debts contracted or offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ARTICLE XVII

If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by the Power at war, they shall be restored to the first proprietor, upon the conditions hereafter stipulated in the twenty-first article for cases of recapture.

ARTICLE XVIII

If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accidents, shall take refuge, with their vessels or effects, within the harbours or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with

all refreshments, provisions, and other things necessary for their sustenance, health, and accom[m]odation, and for the repair of their vessels.

ARTICLE XIX

The vessels of war, public and private, of both parties, shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to shew. But, conformably to the treaties existing between the United States and Great Britain, no vessel that shall have made a prize upon British subjects shall have a right to shelter in the ports of the United States, but if forced therein by tempests, or any other danger or accident of the sea, they shall be obliged to depart as soon as possible.

ARTICLE XX

No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war any commission or letter of marque, for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate; nor shall either party hire, lend, or give any part of its naval or military force to the enemy of the other, to aid them offensively or defensively against the other.

ARTICLE XXI

If the two contracting parties should be engaged in a war against a common enemy, the following points shall be observed between them:

1. If a vessel of one of the parties, taken by the enemy, shall, before being carried into a neutral or enemy's port, be retaken by a ship of war or privateer of the other, it shall, with the cargo, be restored to the first owners, for a compensation of one-eighth part of the value of the said vessel and cargo, if the recapture be made by a public ship of war, and one-sixth part, if made by a privateer.

2. The restitution in such cases shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

3. The vessels of war, public and private, of the two parties, shall

reciprocally be admitted with their prizes into the respective ports of each, but the said prizes shall not be discharged or sold there, until their legality shall have been decided according to the laws and regulations of the State to which the captor belongs, but by the judicatories of the place into which the prize shall have been conducted.

4. It shall be free to each party to make such regulations as they shall judge necessary, for the conduct of their respective vessels of war, public and private, relative to the vessels, which they shall take, and carry into the ports of the two parties. •

ARTICLE XXII

When the contracting parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall upon all occasions take under their protection the vessels of the other going the same course, and shall defend such vessels as long as they hold the same course, against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ARTICLE XXIII

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

ARTICLE XXIV

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge them-

selves to the world and to each other that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies or any other parts of Asia or Africa, but that they shall be placed in some parts of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they shall allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with or set off against any others, nor the balances due on them be withheld as a satisfaction or reprizal for any other article or for any other cause, real or pretended, whatever. That each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations.

ARTICLE XXV

The two contracting parties have granted to each other the liberty of having each in the ports of the other Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favoured nations; but if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ARTICLE XXVI

If either party shall hereafter grant to any other nation any particular favour in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE XXVII

His Majesty the King of Prussia and the United States of America agree that this treaty shall be in force during the term of ten years from the exchange of the ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war shall continue in force until the conclusion of the treaty which shall restore peace.

This treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature, or sooner if possible.

In testimony whereof, the Plenipotentiaries before mentioned have hereto subscribed their names and affixed their seals. Done at Berlin, the eleventh of July, in the year one thousand seven hundred and ninety-nine.

[Seal.] JOHN QUINCY ADAMS.

[Seal.] CHARLES WILLIAM COMTE DE FINKENSTEIN.

[Seal.] PHILIPPE CHARLES D'ALVENSLEBEN.

[Seal.] CHRETIEN HENRI CURCE COMTE DE HAUGWITZ.

TREATY OF 1828¹

Concluded May 1, 1828; Ratification Advised by the Senate, May 14, 1828; Ratification again Advised and Time for Exchange of Ratification Extended by the Senate, March 9, 1829; Ratifications Exchanged March 14, 1829; Proclaimed March 14, 1829.

The United States of America and His Majesty the King of Prussia, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States, of extending, also, and consolidating the commercial intercourse between them, and convinced that this object cannot better be accomplished than by adopting the system of an entire freedom of navigation, and a perfect reciprocity, based upon principles of equity equally beneficial to both countries, and applicable in time of peace as well as in time of war, have, in consequence, agreed to enter into negotiations for the conclusion of a treaty of navigation and commerce; for which purpose the President of the United States has conferred full powers on Henry Clay, their Secretary of State; and His Majesty the King of Prussia has conferred like powers on the Sieur Ludwig Niederstetter, Chargé d’Affaires of His said Majesty, near the United States; and the said Plenipotentiaries, having exchanged their said full powers, found in good and due form, have concluded and signed the following articles:

ARTICLE I

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty, to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

ARTICLE II

Prussian vessels arriving either laden or in ballast in the ports of the United States of America, and, reciprocally, vessels of the United States arriving either laden or in ballast in the ports of the Kingdom of Prus-

¹8 Stat. L. 378; Malloy’s *Treaties*, etc., Vol. 2, p. 1496.

sia, shall be treated, on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light-houses, pilotage, salvage, and port charges, as well as to the fees and perquisites of public officers, and all other duties and charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever.

ARTICLE III

All kinds of merchandise and articles of commerce, either the produce of the soil or the industry of the United States of America, or of any other country, which may be lawfully imported into the ports of the Kingdom of Prussia, in Prussian vessels, may also be so imported in vessels of the United States of America, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in Prussian vessels. And, reciprocally, all kind of merchandise and articles of commerce, either the produce of the soil or of the industry of the Kingdom of Prussia, or of any other country, which may be lawfully imported into the ports of the United States in vessels of the said States, may also be so imported in Prussian vessels, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been imported in vessels of the United States of America.

ARTICLE IV

To prevent the possibility of any misunderstanding, it is hereby declared that the stipulations contained in the two preceding articles are to their full extent applicable to Prussian vessels and their cargoes arriving in the ports of the United States of America, and, reciprocally, to vessels of the said States and their cargoes, arriving in the ports of the kingdom of Prussia, whether the said vessels clear directly from the ports of the country to which they respectively belong, or from the ports of any other foreign country.

ARTICLE V

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States, than are or shall be payable on the like article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce or manufacture of the United States, or of Prussia, to or from the ports of the United States, or to or from the ports of Prussia, which shall not equally extend to all other nations.

ARTICLE VI

All kind of merchandise and articles of commerce, either the produce of the soil or of the industry of the United States of America, or of any other country, which may be lawfully exported from the ports of the said United States in national vessels, may also be exported therefrom in Prussian vessels without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in vessels of the United States of America.

An exact reciprocity shall be observed in the ports of the Kingdom of Prussia, so that all kind of merchandise and articles of commerce, either the produce of the soil or the industry of the said Kingdom, or of any other country, which may be lawfully exported from Prussian ports in national vessels, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishments whatsoever, than if the same merchandise or produce had been exported in Prussian vessels.

ARTICLE VII

The preceding articles are not applicable to the coastwise navigation of the two countries, which is respectively reserved by each of the high contracting parties exclusively to itself.

ARTICLE VIII

No priority or preference shall be given, directly or indirectly, by either of the contracting parties, nor by any company, corporation, or agent, acting on their behalf or under their authority, in the purchase of any article of commerce, lawfully imported, on account of or in reference to the character of the vessel, whether it be of the one party or of the other, in which such article was imported; it being the true intent and meaning of the contracting parties that no distinction or difference whatever shall be made in this respect.

ARTICLE IX

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ARTICLE X

The two contracting parties have granted to each other the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations. But if any such Consul shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

The Consuls, Vice-Consuls, and Commercial Agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

ARTICLE XI

The said Consuls, Vice-Consuls, and Commercial Agents are authorised to require the assistance of the local authorities, for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and, on this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But if not sent back within three months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XII

The twelfth article of the treaty of amity and commerce, concluded between the parties in 1785, and the articles from the thirteenth to the twenty-fourth, inclusive, of that which was concluded at Berlin in 1799, with the exception of the last paragraph in the nineteenth article, relating to treaties with Great Britain, are hereby revived with the same force and virtue as if they made part of the context of the present treaty, it being, however, understood that the stipulations contained in the articles thus revived shall be always considered as in no manner affecting the treaties or conventions concluded by either party with other Powers, during the interval between the expiration of the said treaty of 1799, and the commencement of the operation of the present treaty.

The parties being still desirous, in conformity with their intention, declared in the twelfth article of the said treaty of 1799, to establish between themselves, or in concert with other maritime Powers, further provisions to ensure just protection and freedom to neutral navigation

and commerce, and which may, at the same time, advance the cause of civilization and humanity, engage again to treat on this subject at some future and convenient period.

ARTICLE XIII

Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom, with respect to the various events which may take place, it is agreed that a merchant vessel belonging to either of them, which may be bound to a port supposed at the time of its departure to be blockaded, shall not, however, be captured or condemned for having attempted a first time to enter said port, unless it can be proved that said vessel could and ought to have learnt, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once shall, during the same voyage, attempt a second time to enter the same blockaded port, during the continuance of the said blockade, shall then subject themselves to be detained and condemned.

ARTICLE XIV

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native, in like case, until the owner may take measures for receiving them. And if question should arise among several claimants to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation and exempt

from all duties of detraction, on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ARTICLE XV

The present treaty shall continue in force for twelve years, counting from the day of the exchange of the ratifications; and if twelve months before the expiration of that period, neither of the high contracting parties shall have announced, by an official notification to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on until the expiration of the twelve months, which will follow a similar notification, whatever the time at which it may take place.

ARTICLE XVI

This treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Prussia, and the ratifications shall be exchanged in the city of Washington, within nine months from the date of the signature hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed the above articles, both in the French and English languages, and they have thereto affixed their seals; declaring, nevertheless, that the signing in both languages shall not be brought into precedent, nor in any way operate to the prejudice of either party.

Done in triplicate at the city of Washington on the first day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and the fifty-second of the Independence of the United States of America.

[Seal.] H. CLAY.

[Seal.] LUDWIG NIEDERSTETTER.

Opinions of the Attorneys General of the United States.

**CASE OF DESERTERS FROM THE PRUSSIAN FRIGATE
"NIOBE"¹**

The provisions of the treaty of May 1, 1828, between the United States and Prussia, for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union and deserters from such vessels.

ATTORNEY GENERAL'S OFFICE,

August 19, 1868.

Sir: I have considered the opinion of the examiner of claims in your department, transmitted to me under cover of your letter of the 20th ultimo, upon the question, how far the treaty of 1828, between the United States and Prussia, on the subject of the arrest and imprisonment by the local authorities of each country of deserters from the ships of war and merchant vessels of the other, is obligatory upon the United States in respect to deserters from the public and private vessels sailing under the flag of the North German Union.

The result of the victory of Sadowa and the negotiations of Nicholsburg was the territorial enlargement of Prussia, by the annexation of Hesse Cassel, Nassau, Hanover, Holstein, and Frankfort, and the foundation of a confederation or union between Prussia, thus enlarged in territory and population, and the North German States, under a constitution of government which gave the king of Prussia the presidency of the union, with power to declare war and conclude peace, make treaties with foreign States, accredit ministers and receive them, likewise the command, in war and in peace, of the entire army and navy of the union, with power, whenever the public safety is threatened, to declare martial law in any part of the union.

Prussia has a treaty of commerce and navigation with the United States, dated May 1, 1828, which provides, that the consuls of the respective governments "are authorized to require the assistance of the local authorities for the search, arrest, and imprisonment of the deserters from the ships of war and merchant vessels of their country."

In April last application was made, under this provision of the treaty

¹12 Op. Atty. Gen.

with Prussia, by the consul general of the North German Union in New York, to a United States commissioner, for a warrant for the arrest of eleven deserters from a public armed vessel, sailing under the flag of the union,*which is styled by the minister of Prussia near this Government as "His majesty's frigate Niobe." The application of the consul general was refused by the commissioner, upon the general ground that the treaty stipulation referred to did not apply to vessels belonging to the North German Union. Baron Gerolt, the diplomatic representative here of the North German Union, protests against the refusal of the commissioner to issue a warrant for the arrest of these deserters; and hence the question is presented as to the validity of the objection urged by the commissioner to the right of the consular representative of the union to claim, on behalf of that government, in respect to deserters from one of its public armed vessels, the benefits of the treaty of 1828. The examiner of claims, in the opinion you have transmitted to me, has discussed not only this question, which is practically the only one that has been raised, so far as I am informed, by any events that have actually transpired calling for a consideration of our treaty relations with the States of the North German Union, but also the larger question as to the effect of the change in the political status and relations of the States consolidated and confederated with Prussia, upon the stipulations in our treaties of commerce and navigation with Prussia and those other States, in respect to the seamen deserting from their merchant vessels now sailing under a common national flag. I fully concur in the conclusion of the law officer of your department, that the commissioner at New York erred in refusing to issue a warrant for the arrest of the deserting seamen of the frigate "Niobe," but I will forbear at this time, with your permission, from giving an official opinion on the more doubtful and difficult questions which are discussed in the papers from your department now before me. It seems to me that a better occasion, perhaps, would be afforded for such a discussion when a case practically shall arise calling for the communication of the views of the Executive in regard to our treaties with the States of the North German Union to those judicial functionaries who, under our system of government, are intrusted with the due fulfillment and execution of those treaties on the part of the United States, in respect to the subjects-matter particularly discussed by the examiner of claims.

In regard to naval vessels of the North German Union, I am clearly of opinion that they are the ships of war of Prussia, within the

meaning of the treaty of 1828, and that deserters therefrom may be arrested by the proper local authorities of the United States, on the application of the proper consular officer of the union, pursuant to that treaty. I have referred incidentally to those provisions of the constitution of the union, which declare as follows :

The presidency of the union belongs to the crown of Prussia. The crown of Prussia is therefore entitled to represent the union as a nation, and to declare war and conclude peace in the name of the union, to form alliances and make other treaties with foreign States, accredit ministers and receive them.

The aggregate land forces of the union shall form a single army, which, in war and peace, is placed under the command of his majesty the king of Prussia, as commander-in-chief of the union.

The entire navy of the union is under the command of Prussia. Its organization belongs to the king of Prussia, who appoints its officers and officials, who take the oath of allegiance to him.

The construction and effect given by the examiner of claims to these provisions of the constitution of the German Union seem to be well supported by the course of reasoning pursued in his opinion, and I content myself at present with an expression of satisfaction with his view as applied to the case to which your attention has been directed by Baron Gerolt.

I would not be understood as entertaining any objection to the recommendation which the law officer of your department has deemed necessary to make looking to a review of our treaties with the States of the North German Union. The relations of the States of North Germany to one another and to the United States have been so considerably modified by the confederation of 1867, that many perplexing questions of reciprocal rights and obligations are likely to arise under those various treaties, and those questions it may be deemed the part of good statesmanship to avoid, by new treaties adapted to the present condition of the North German States.

I desire to remark, in conclusion, that under our system stipulations for the apprehension, within our jurisdiction, of deserters from foreign vessels, are executed by officers of the judicial department of the Government, in virtue of special authority conferred by acts of Congress. The questions arising upon the interpretation and effect of such treaties must, therefore, be peculiarly and primarily questions of judicial cognizance and consideration. The act of March 2, 1829, authorizes any court, judge, justice, or other magistrate, having competent power, to

issue warrants for the arrest, for examination, of seamen deserting from the vessels of any foreign governments with whom we have treaties for the restoration of deserting seamen, upon the application of the consular officers of such governments, with authority to deliver up such seamen to such consular officers. The subsequent act of February 24, 1855, confers upon commissioners of the circuit courts of the United States similar authority. The officers named in these statutes are not subject to the control or direction of the executive department of the Government.

Applications for the apprehension of deserting seamen are made to them directly by the consuls of foreign governments, and it may well occur that such applications are disposed of summarily, and before any opportunity can arise for intervention by the diplomatic representative of the foreign government, or the political department of our own Government. It may be of the highest consequence, that in a case involving the construction of such a treaty, full opportunity should be afforded both this and the foreign government for the presentation of their views upon the subject to the judicial functionary the exercise of whose jurisdiction has been invoked in the particular case. I apprehend that the learned commissioner, who refused to issue his warrant in the case of the seamen of the "Niobe," would have taken a different view of the treaty in question if his attention had been particularly called to those provisions of the constitution of the North German Union which I have referred to.

It may be proper, in case you agree with the view I have taken of that treaty in respect to public armed vessels under the flag of the North German Union, to make the district attorney of the United States at New York acquainted with your opinion, and to give such instructions to that officer as will enable him to make proper representation of that opinion to the commissioner or other judicial functionary in any future case of like character, and to advise your department of the occurrence of other cases arising under our treaties with the States of the North German Union that may call for renewed consideration of the subject by your department.

I am, sir, very respectfully,

Your obedient servant,

WM. M. EVARTS.

HON. WM. H. SEWARD,
Secretary of State.

TONNAGE DUTY¹

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act of June 26, 1884, chapter 121, and entered in our ports, is purely geographical in character, inuring to the advantage of any vessel of any power that may choose to transport between this country and any port embraced by the fourteenth section of that act.

DEPARTMENT OF JUSTICE, .

September 19, 1885.

Sir: Your communication of the 8th September, instant, with the inclosures therein referred to, has received my deliberate consideration, and I have the honor to submit, in reply, that I agree with you entirely in the interpretation you place on the fourteenth section of the act of Congress of the 26th June, 1884, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," and in your conclusion that the claims set up by the several powers mentioned by you are not founded.

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act and entered in our ports is, I think, purely geographical in character, inuring to the advantage of *any* vessel of *any* power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act.

I see no warrant, therefore, to claim that there is anything in "the most favored nation" clause of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside the limitation of the act.

Your able and comprehensive discussion of the subject renders it quite unnecessary for me to treat it at large.

I have the honor to be, your most obedient servant,

W. A. MAURY,
Acting Attorney-General.

THE SECRETARY OF STATE.

¹18 Op. Atty. Gen.

Annex

CORRESPONDENCE WITH THE LEGATION OF GERMANY IN WASHINGTON¹

No. 10

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,

Washington, August 3, 1885 (Received August 5).

The undersigned, imperial German ambassador extraordinary and minister plenipotentiary, has, in accordance with the orders he has received, the honor to make the following very respectful communication to Hon. Thomas F. Bayard, Secretary of State of the United States.

By a law of June 26, 1884 (an act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes), section 14 (tonnage tax), it has been provided that vessels which sail from a port in North or Central America, in the West Indian Islands, the Bahama, Bermuda, and Sandwich Islands, to a port of the United States, shall pay in it, in place of the previous tonnage tax of 30 cents per ton a year, only 3 cents per ton, and not more than 15 cents a year, whilst vessels from other foreign ports have to bear a tax of 6 cents. This lowering of the tax to 3 cents has been granted to the favored countries—Canada, Newfoundland, the Bahamas, Bermuda, and West Indian Islands, Mexico, and Central America, including Panama and Aspinwall—unconditionally and without regard to the taxes, however relatively high, these countries on their side levy on American ships.

Article IX of the Prussian-American treaty of the 1st of May, 1828, which has been lately, in the correspondence between the cabinets of Berlin and Washington concerning the petroleum railroad rates as well as because of the Spanish-American treaty concerning the trade of Cuba and Puerto Rico, successively asserted by both Governments to be valid for all Germany, runs as follows:

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

¹*Foreign Relations*, 1888, part 2, pp. 1872-1878.

NOTE: The correspondence subsequent to the date of the Attorney General's opinion is also printed in order to complete the diplomatic side of the controversy.

The treaties which the United States in their time have concluded with the Hanse cities, Oldenburg and Mecklenburg, contain similar provisions. In accordance with the purport of these, Germany has an immediate claim, and without making any concession in return, to participate in the enjoyment of the tonnage tax abatement to 3 cents per ton, which has been unconditionally conceded.

The undersigned is, in accordance with the view of the Imperial Government, above set forth, directed to claim from the Government of the United States for German vessels the abatement of the tonnage tax to 3 cents per ton, and to propose, at the same time, the repayment of the tonnage tax which at the rate of 6 cents per ton has been overpaid since the law of the 26th of June, 1884, went into effect.

While the undersigned reserves for himself the right to make in due time proper proposals in reference to the abatement provided over and above this in the law of the 26th June of last year, dependent on certain conditions, and which (abatement) may in the future even exceed that of 3 cents per ton, according to the result of proper inquiries concerning the tonnage dues and other taxes, hereafter to be levied in German harbors, he has the honor to request very respectfully that the Secretary of State will kindly take the proper course, so that German shipping may as soon as possible participate in the unconditional favor, to which it is entitled, of an abatement of the tonnage tax to 3 cents.

The undersigned has the honor to await, very respectfully, your kind answer in reference to this matter, and avails himself, etc.

H. V. ALVENSLEBEN.

No. 11

Mr. Bayard to Mr. von Alvensleben

DEPARTMENT OF STATE,
Washington, November 7, 1885.

Sir: I had the honor to receive in due season your note of August 3 last, touching the application of the provisions of the fourteenth section of the shipping act, approved June 26, 1884, in respect of the collection of tonnage tax to vessels of Germany coming from ports of that country to ports of the United States, under the most favored nation clause of the existing treaty of 1828 between the United States and Germany.

The importance of the questions involved in the claim of the German Government and in like claims preferred by other governments has led to the submission of the entire subject to the judgment of the Attorney-General.

The conclusions of the Department of Justice, after a careful examination of the premises, are that—

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act, and entered into our ports is, I think, purely geographical in character, inuring to the advantage of any vessel of any power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the act. I see no warrant, therefore, to claim that there is anything in "the most favored nation clause" of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitation of the act.

These conclusions are accepted by the President, and I have, accordingly, the honor to communicate them to you, as fully covering the points presented in your note of August 3 last.

Accept, etc.

T. F. BAYARD.

No. 12

Count Leyden to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,
Washington, November 17, 1885 (Received November 19).

MR. SECRETARY OF STATE:

I have the honor most respectfully to acknowledge the receipt of your polite note of the 7th instant, whereby you inform me that the Department of Justice of the United States has decided in the matter of the application of the provisions of section 14 of the act relative to navigation of June 26, 1884, to German vessels, that the reduction of tonnage duties which is provided for a specified region is of a purely geographical character, and that the most favored nation clause can consequently have no application in this case.

I have the honor, at the same time, to inform you that I have brought the contents of your aforesaid note to the notice of the Imperial Government.

Accept, etc.,

COUNT LEYDEN.

No. 13

Mr. von Alvensleben to Mr. Bayard

[Translation]

IMPERIAL GERMAN LEGATION,
Washington, February 16, 1886 (Received February 18).

MR. SECRETARY OF STATE:

The Imperial Government has seen by your note of November 7,

1885, relative to the enforcement of the provisions of section 14 of the navigation act of June 26, 1884, that the United States Government rejects the application (made on the basis of the most favored-nation treaties now existing with Prussia and the German States) for equal rights with the States of North and Central America and the West Indies. This rejection is based on the ground that that exemption which is granted to all vessels of all powers sailing between the countries in question and the United States is purely geographical in its character, and can not, therefore, be claimed by other States in view of the most favored-nation clause.

I am instructed, and I have the honor most respectfully to reply to this, that such a line of argument is a most unusual one, and is calculated to render the most favored-nation clause wholly illusory. On the same ground, it would be quite possible to justify, for instance, a privilege granted exclusively to the South American States, then one granted also to certain of the nearer European nations, so that finally, under certain circumstances, always on the pretext that the measure was one of a purely geographical character, Germany alone, among all the nations that maintain commercial relations with America, notwithstanding the most favored-nation right granted to that country by treaty, might be excluded from the benefits of the act.

It can not be doubted, it is true, that on grounds of purely local character certain treaty stipulations between two powers, or certain advantages autonomically granted, may be claimed of third States not upon the ground of a most favored-nation clause. Among these are included facilities in reciprocal trade on the border, between States whose territories adjoin each other. It is, however, not to be doubted that the international practice is that such facilities, not coming within the scope of a most favored-nation clause, are not admissible save within very restricted zones. In several international treaties these zones are limited to a distance of ten kilometers from the frontier. From this point of view, therefore, the explanation given by the United States Government of section 14 of the shipping act can not be justified.

This law grants definite advantages to entire countries, among others to those situated at a great distance from the United States; these advantages are, beyond a doubt, equivalent to facilities granted to the trade and navigation of those countries, even if they do, under certain circumstances, inure to the benefit of individual vessels of foreign nations. It scarcely need be insisted upon that these advantages favor the entire commerce of the countries specially designated in the act, since they are now able to ship their goods to the United States on terms that have been artificially rendered more favorable than those on which other countries not thus favored are able to ship theirs.

The treaty* existing between Prussia and the United States expressly stipulates that—

*Treaty of 1828, Art. IX.

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce it shall immediately become common to the other party, freely where it is freely granted to such other nation, or on yielding the same compensation when the grant is conditional.

Such a compensation, so far as the reduction of the tonnage tax to 3 cents is concerned, has not been stipulated for by the United States in the aforesaid shipping act. Germany is, therefore, *ipso facto*, entitled to the reduction of the tax in favor of vessels sailing from Germany to the United States, especially since, according to the constitution of the Empire, no tonnage tax is collected in Germany from foreign vessels; that is to say, no tonnage tax of the character of American tonnage taxes in the sense of section 8, paragraph 1, article 1, of the American Constitution, viz, those designed to pay the debts of the Government and to pay the expenses of the common defense and the general welfare.

As you remark in your esteemed note, Mr. Secretary of State, you have based your decision on an opinion of the Attorney-General. In opposition to this view, it will be seen by the printed decisions of the Secretary of Treasury, that the latter, in an opinion on this subject addressed to the Department of State under date of May 11, 1885, expressed the opinion that vessels sailing from Portugal to the United States are, indeed, entitled to the privileges granted by section 14 of the shipping act, on the ground of the most favored-nation treaty existing between the two nations. This opinion harmonizes in the main with the view entertained by the Imperial Government.

The Imperial Government entertains the hope, in view of the foregoing considerations, that the United States Government on reconsidering this matter will not maintain the position taken in the note of November 7, 1885, and that it will grant to German vessels sailing between the two countries the same privileges that have long been granted without compensation by the German Empire to American vessels.

In having the honor, therefore, hereby to reiterate the application made in my note of August 3, 1885, for the reduction of the tonnage tax to 3 cents in favor of vessels engaged in trade between Germany and the United States, I hope that the decision of the United States Government in this matter will be kindly communicated to me.

Accept, etc.,

H. v. ALVENSLEBEN.

No. 14

Mr. Bayard to Mr. von Alvensleben

DEPARTMENT OF STATE,
Washington, March 4, 1886.

Sir: With reference to previous correspondence on the subject, I have the honor to acknowledge the receipt of your note of the 15th ultimo, relative to the question as to the applicability of the most favored nation clauses of the treaties of Prussia and other German states and the United States to the provisions of section 14 of the act of Congress of June 26, 1884.

In reply I beg to inform you that your note will have consideration, it being sufficient for the present to observe that Germany admits that neighborhood and propinquity justify a special treatment of intercourse which may not be extended to other countries under the favored nation clause in treaties with them, and only appears to question the distance within which the rule of neighborhood is to operate.

Accept sir, etc.,

T. F. BAYARD.

No. 15*Mr. von Alvensleben to Mr. Bayard*

[Translation]

IMPERIAL GERMAN LEGATION,
Washington, August 1, 1886 (Received August 2).

MR. SECRETARY OF STATE:

I had the honor duly to receive your note of the 4th of March last, whereby you informed me that my observations concerning the applicability of the most favored nation clause to section 14 of the act of Congress of June 26, 1884, would be taken into consideration, and in which, for the time being, you confined yourself, by way of reply, to one remark.

In the mean time an act of Congress entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," has been approved by the President of the United States under date of June 19, 1886 (Public—No. 85), and has thereby become a law. I have brought this act to the notice of the Imperial Government and have been instructed to state the view taken by that Government of this latest law and to ask your attention to its incompatibility with the stipulations of the treaty existing between Germany and the United States.

This act extends, in a measure, the power conferred upon the Presi-

dent by section 14 of the act of June 26, 1884, to diminish tonnage dues in certain cases.

According to the act of 1884 the President was authorized, only in the case of vessels coming from the ports of North and Central America, the West Indies, the Bahama, Bermuda, and Sandwich Islands, or Newfoundland, and entering ports of the United States, to reduce the duty of 3 cents per ton, which was imposed on such vessels, provided that the said duty exceeded the dues which American vessels were obliged to pay in the aforesaid ports.

A reduction of the duty of 6 cents, to which all vessels coming from other ports were subjected, was not allowable, even on the supposition in question.

Vessels from the aforesaid favored ports thus enjoyed a special preference in two ways: In the first place, they paid in all cases a duty of but 3 cents per ton, while vessels from other ports were obliged to pay 6 cents per ton; even these 3 cents could be remitted, either in whole or in part, provided that it could be shown that the duty paid by American vessels in the ports concerned amounted to less than 3 cents per ton, or that no such duty was levied in said ports. This latter privilege is, according to the new law, no longer to be exclusively enjoyed by vessels from the favored ports.

Likewise, vessels from other than the most favored ports may obtain a reduction or return of the duty of 6 cents to be paid by them per ton, provided that in the ports from which they have come American vessels pay less than 6 cents or no tonnage duty at all. The amount of the duty to be remitted is computed according to the amount of the duties levied in the ports of departure.

The new law is evidently based upon the idea of reciprocity. If this idea had been consistently carried out no objection could be made to it and the Imperial Government would have no further ground of complaint. This, however, is not the case, inasmuch as the new law grants special privileges, as did the old, to vessels from the above-mentioned ports, declaring that they, without any compensation on their part, shall pay but 3 cents per ton, even though a duty in excess of that amount is paid by American vessels in the ports concerned. The number of favored ports is even extended to those of South America bordering on the Caribbean Sea.

The Imperial Government has from the outset protested against this one sided privilege, which is in violation of the treaty stipulations of Germany with the United States. Since this privilege is not only not abolished by the new law, but is confirmed and even still further extended, the original attitude assumed by the Imperial Government towards the old law has been in no wise changed by the new act, and the Imperial Government must continue to protest against the violations of its treaty rights while maintaining the arguments contained in my note of February 15, 1886. As long as vessels from the ports of North and Central America pay but one-half the tonnage duty that is

levied upon vessels from German ports, without being required to furnish proof that less than 6 cents is exacted from American vessels in their ports, the Imperial Government will be obliged to maintain its claim for similar usage, viz, the exemption from furnishing such proof.

As is stated in my note of February 15, 1886, the Imperial Government is unable to regard as conclusive your principal argument, viz, that the privilege in question is of a purely geographical character, because the effect of this privilege is to benefit, in point of fact, the entire trade and navigation of those countries in which the ports in question are situated. No paramount importance can be attached (as is done by the United States Government) to the mere form in which this privilege is granted to particular countries.

I am therefore instructed, on the ground of the treaty right pertaining to the Imperial Government, to reiterate its previous claim that German ports shall be placed on a footing precisely similar to that of North and Central American ports, etc., and most respectfully to request you, Mr. Secretary of State, to favor me with the further reply which, in your note of March 4, you gave me to understand that I might expect from you.

Accept, etc.,

H. v. ALVENSLEBEN.

DUTY—IMPORTED SALT—TREATY WITH PRUSSIA¹

The treaty of May 1, 1828, between the United States and the Kingdom of Prussia, is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia. *Semble*, that it is not effective as regards the rest of that Empire.

The "most favored nation clause" in that treaty is not violated by paragraph 608 of the tariff act of August 27, 1894, laying a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States.

In case of conflict between a treaty and a subsequent statute, the latter governs.

The laws of a foreign country are not known to the Attorney-General, but are facts to be proved by competent evidence.

As to when the discriminating duty aforesaid applies to a country which imposes a duty on salt exported from the United States but lays a countervailing excise tax on domestic salt. *Quære*.

DEPARTMENT OF JUSTICE,

November 13, 1894.

Sir: I have the honor to acknowledge your communication of October 27, asking my official opinion upon the question whether salt

¹21 Op. Atty. Gen. 80.

imported from the Empire of Germany is dutiable under paragraph 608 of the tariff act of August 27, 1894. That paragraph, which puts salt in general on the free list, contains the following proviso:

Provided, That if salt is imported from any country whether independent or a dependency which imposes a duty upon salt exported from the United States, then there shall be levied, paid, and collected upon such salt the rate of duty existing prior to the passage of this act.

As Germany imposes a duty upon salt exported from the United States, German salt is apparently subject to the proviso just quoted. The German ambassador, however, claims it is entitled to come into the United States free on two grounds.

One is the "most favored nation clause," so called, which is embodied in the following provisions of the treaty of May 1, 1828, between the United States and Prussia:

ARTICLE V

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Prussia, and no higher or other duties shall be imposed on the importation into the Kingdom of Prussia of any article the produce or manufacture of the United States than are or shall be payable on the like article being the produce or manufacture of any other foreign country. * * *

ARTICLE IX

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce it shall immediately become common to the other party freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

It should be noted that while this treaty is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia no facts or considerations with which I have been made acquainted justify the assumption that it is to be taken as effective as regards other portions of the Empire. Neither am I informed whether the German salt, for which free admission into this country is demanded, is a product or manufacture of Prussia proper, or of some other part or parts of the German Empire.

If it be assumed, however, for present purposes, that the treaty of 1828 binds the United States as regards all the constituent parts of

the German Empire, the claim of the German ambassador, founded upon the "most favored nation clause," must be pronounced untenable for at least two conclusive reasons.

In the first place, the "most favored nation clauses" of our treaties with foreign powers have from the foundation of our Government been invariably construed both as not forbidding any internal regulations necessary for the protection of our home industries, and as permitting commercial concessions to a country which are not gratuitous, but are in return for equivalent concessions, and to which no other country is entitled except upon rendering the same equivalents. Thus, Mr. Jefferson, when Secretary of State in 1792, said of treaties exchanging the rights of the most favored nation that "they leave each party free to make what internal regulations they please, and to give what preference they find expedient to native merchants, vessels, and productions." In 1817 Mr. John Quincy Adams, acting in the same official capacity, took the ground that the "most favored nation clause only covered gratuitous favors and did not touch concessions for equivalents expressed or implied." Mr. Clay, Mr. Livingston, Mr. Evarts, and Mr. Bayard, when at the head of the Department of State, have each given official expression to the same view. It has also received the sanction of the Supreme Court in more than one well-considered decision, while in *Bartram v. Robertson* (122 U. S. 116), Mr. Justice Field, speaking for the whole court, expounded the stipulations of the "most favored nation clause" in this language (p. 120):

They were pledges of the two contracting parties, the United States and the King of Denmark, to each other, that, in the imposition of duties on goods imported into one of the countries which were the produce or manufacture of the other, there should be no discrimination against them in favor of goods of like character imported from any other country. They imposed an obligation upon both countries to avoid hostile legislation in that respect.

This interpretation of the "most favored nation clause," so clearly established as a doctrine of American law, is believed to accord with the interpretation put upon the clause by foreign powers—certainly by Germany and Great Britain. Thus, as the clause permits any internal regulations that a country may find necessary to give a preference to "native merchants, vessels, and productions," the representatives of both Great Britain and Germany expressly declared, at the International Sugar Conference of 1888, that the export sugar bounty of one

country might be counteracted by the import sugar duty of another without causing any discrimination which could be deemed a violation of the "most favored nation clause." So both Germany and Great Britain acquiesced in the position of the United States, that our treaty with Hawaii did not entitle those nations to equal privileges in regard to imports with those thus obtained by the United States, the privileges granted to the United States being in consideration of concessions by the United States which Germany and Great Britain not only did not offer to make, but, in the nature of things, could not make.

If these established principles be applied to the case in hand but one result seems to be possible. The form which the provisions of our recent tariff act relating to salt may have assumed is quite immaterial. It enacts, in substance and effect, that any country admitting American salt free shall have its own salt admitted free here, while any country putting a duty upon American salt shall have its salt dutiable here under the preexisting statute. In other words, the United States concedes "free salt" to any nation which concedes "free salt" to the United States. Germany, of course, is entitled to that concession upon returning the same equivalent. But otherwise she is not so entitled, and there is nothing in the "most favored nation clause" which compels the United States to discriminate against other nations and in favor of Germany by granting gratuitously to the latter privileges which it grants to the former only upon the payment of a stipulated price.

In the next place, even if the provisions of our recent tariff act under consideration could be deemed to contravene the "most-favored-nation clause" of the treaty with Germany—as they can not be for the reasons stated—the result will be the same. The tariff act is a statute later than the treaty and, so far as inconsistent with it, is controlling. The principle is too well settled to admit of discussion, and if any relief from its operations is desirable it can be obtained only through proper modifying legislation by Congress.

While the first proposition of the German ambassador proceeds upon the basis that Germany does levy an import duty on American salt, his second proposition is that in reality it does not do so. The duty, it is said, should be regarded as in fact an internal excise tax, since a tax equivalent to the duty is levied upon all salt in the country whenever and however it appears, and is the same upon salt produced in Germany as upon salt coming from the United States. It is matter of convenience merely that the tax upon American salt is collected

immediately upon its arrival in port. In short, the claim is that there is no discrimination against American salt, which is the evil our statute aims to prevent; that American salt and German salt are in reality treated on a footing of entire equality.

The validity of this proposition I do not think I am in a position to judge of, for want of sufficient data. The laws of Germany I do not and can not be expected to know, and, like other foreign laws, are facts to be proved by competent evidence. The statement respecting them made by the German ambassador in a communication to the Secretary of State (copy of which you inclose) are undoubtedly correct, but they leave me in doubt upon what seems to me a vital point, viz, whether the internal excise tax on salt referred to is imperial in character—that is, is levied by and belongs to the Imperial Government—or is local, and is levied by and belongs to one or more constituent states of the Empire. If it is of the latter character, it probably can not be considered in relation to the matter in hand any more than a like domestic tax of any one or more of the States of the United States could be considered in the same relation. If, however, it could be considered under any circumstances, then it is obviously material to know whether such tax is levied by all of the constituent states of the Empire, without exception, and actually or necessarily at the same rate.

As at present advised, therefore, salt imported from the Empire of Germany is, in my judgment, legally dutiable under the statute above quoted.

Respectfully, yours,

RICHARD OLNEY

THE SECRETARY OF THE TREASURY.

Decisions of Federal Courts

THE BARK ELWINE KREPLIN¹

Seamen's Wages.—Desertion.—Imprisonment on Shore.—Consul.—Treaty With Prussia.—Jurisdiction.—Parties.—Practice.—Minor.—Executive Recognition.

- A Prussian bark, with a crew whose term of service had not expired, was laid up at Staten Island, on account of the war between Prussia and France. A difficulty arose between the captain and the crew, and they demanded leave to go and see the consul. This the captain refused to allow, but agreed that one of them, named L., might go. They insisted that they would all go, and the captain went ashore to get the aid of the police. After he had gone, the crew informed the mate that they were going to see the consul, and went ashore, without serious objection from the mate. The captain, returning, was told by the mate that the men had gone ashore, and high words passed between them, which resulted in the mate's saying that he would go too, and he went ashore, without objection from the captain. The captain, with a police officer, overtook the crew, and all hands went before a police justice, where the captain made a complaint against the mate and the crew for mutiny and desertion. The justice informed the captain that he had no jurisdiction, but he directed a policeman to take the men into custody, and they were locked up. The captain then went before the Prussian consul, and made complaint, requesting that the crew be punished, and that they be kept in custody preliminarily, and stating that he could not receive the mate on board again. The consul then issued a requisition to a commissioner of the Circuit Court of the United States, stating that the men had deserted, and asking for a warrant to arrest the men, and, "if said charge be true," that they be detained until there should be an opportunity to send them back. The requisition the captain took to the police justice, who thereupon, without examination, committed all the men to the county jail, where they lay for ten days. On the direction of the consul, they were then released, and came to the consul's office, where they were advised to go to the ship, and ask the captain for their wages. Some of them went, and the captain agreed to meet the crew at the consul's office next day. He came there, but the parties failed to meet each other, and thereafter the seamen executed assignments of their wages to the mate,

¹8 Fed. Cases, 592 (Case 4,427) ; 4 Benedict, 413.

NOTE.—This case was reversed by the Circuit Court, on the ground that this Court was prohibited, under the treaty with Prussia, from exercising jurisdiction. An application was made to the Supreme Court for a *mandamus*, to compel the Circuit Court to pass upon the merits, but was denied. Fed. Cases (No. 4426), vol. 8; 588.

but without consideration, and he filed this libel against the vessel, to recover the wages of all. The captain was part owner of the ship. He defended the suit, and claimed that the men had forfeited their wages by desertion; that they had agreed in the articles not to bring the suit; and that the Court, under the treaty between the United States and Prussia, had no jurisdiction.

Held, That, as to the mate and L., there could be no pretence of desertion, for they left the vessel with the captain's consent;

That, as the other seamen only left the ship, without taking their clothes, to go and see the consul, the charge of desertion was not made out against them;

That the conduct of the captain, in imprisoning the men, was unlawful, and sufficient to dissolve the contract of the mariners;

That no law permits the imprisonment of deserters in our jails, except on proof of the facts before a competent tribunal;

That the men were not prevented from bringing this suit by the clause in the article referring to that provision of the German mercantile law, that "the seaman is not allowed to sue the master in a foreign port," because this is not a suit against the master, and the master having, by his unlawful conduct, absolved the men from their agreement, had absolved them from this portion of it with the rest;

That the clause in the treaty between the United States and Prussia, that "the consuls, vice-consuls, and commercial agents shall have the right, as such to act as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless, &c., &c.," was not sufficient to oust this Court of its jurisdiction over this controversy.

Whether this clause has any application to suits *in rem—quære*.

That the Prussian consul had not acted in this matter as judge or arbitrator, which words must be taken in their ordinary sense, implying investigation of facts upon evidence, the exercise of judgment as to their effect, and a determination thereon;

That the consul is not a Court, and neither his record nor his testimony is conclusive on this Court;

That, as the consul, though really appointed as consul of the North German Union, was recognized by the Executive Department as consul of Prussia by virtue of such appointment, the action of the Executive was binding on the Court, and he must be held to be the Prussian consul;

That the seamen might file a petition to be now made colibellants, and on such petition being filed, and the cancellation of their assignments to the mate, they would be entitled to decrees for their wages.

In admiralty, minors are allowed to sue for wages in their own name.

BENEDICT, J. This is a cause of subtraction of wages, instituted by Max Newman, who was the chief mate of the Prussian bark *Elwine Kreplin*, to recover the sum of \$173, being the amount of his wages

earned in the capacity of chief mate of that vessel; and also the sum of \$1,158, which is the aggregate amount of the wages of the crew, which he claims to recover as assignee of the seamen. A statement of the facts in proof is necessary to an understanding of the many questions raised.

The time of service and rates of wages are not disputed. The libel concedes the term of service for which the men were shipped to have been two years, which has not yet expired.

This term of service being admitted in the libel, is to be taken as proved, although it is not entirely clear from the agreement itself that such was its legal effect. In the prosecution of her voyage, the brig arrived in this port, and, war having broken out between Prussia and France, she was compelled to lay up here to wait for peace. She was accordingly laid up at Staten Island, and while there the difficulty arose which gave rise to the present litigation. It appears that on the morning of the 1st of August, 1870, before breakfast, the master undertook to chastise the cabin boy, in the cabin. The boy's cries being heard by the crew, who were at work on deck, they went in a body into the cabin, and challenged the right of the master to chastise the boy. The master thereupon desisted, and the men returned to their work on deck. The master soon followed, and an altercation ensued between the master and crew, in which various complaints were made, and some vile epithets applied to the master by the mate, who was not in the cabin with the men, but in the altercation on deck took part with the crew. During the dispute, the men, in a body, demanded permission to go before the consul with their complaints. Permission was given to one named Lutte, and perhaps to Martens also. The permission to Lutte is conceded by the master, but permission to Martens is denied. Upon permission being given to Lutte, the crew cried out, "We will all go." When the dispute ended, the captain went to his breakfast, and after breakfast went ashore, to obtain, as he says, the aid of the police, on account of the mutinous condition of the crew. After he was gone, the crew, having finished cleansing the decks, and eaten their breakfast, dressed and informed the mate, then in command, that they were going to the consul, and went ashore. No objection was made by the mate, beyond a suggestion that they had better wait till the captain returned. Soon after the men had left, the captain returned, but without any police, and was informed by the mate that the crew had gone ashore. Words thereupon passed between the

captain and mate, which resulted in the mate's saying, "I will go, too," whereupon he also left, without any objection by the master. On leaving the ship, the mate proceeded to the ferry leading to New York city, where the office of the Prussian consul is located. The rest of the crew appear to have followed the carpenter, who went to the police station to enter a complaint against the master for beating the boy, in whom the carpenter, doubtless, took more interest than the others, as he came from the same town in Germany. The master soon appeared at the police station, and shortly after at the ferry house, with a policeman. The mate, at their request, accompanied them to Justice Garret, a police justice of the village of Edgewater. There the captain made a complaint against the whole crew, including the mate, for mutiny and desertion, but was informed by the justice that he was without jurisdiction, and that application must be made to the United States courts. The justice, however, was afterwards induced to direct a policeman to take the men into custody, if he would do so at his own risk. This the policeman did, and the mate and men were then locked up.

The master next proceeded to the consul's office, and there made complaint in writing, of which a protocol was made, describing the occurrence of the morning on board the ship, and stating that the men were then in custody on Staten Island, and ending as follows: "I request of the consul-general the punishment of the entire crew, especially of the mate, Newman, who has instigated the complot. Since my life is not safe, I request that the entire crew be kept in custody preliminarily; and, under existing circumstances, I can not again take the mate on board."

The consul thereupon issued a requisition, the substance of which has been proved, in the absence of the original. To whom this requisition was addressed is not certain. Justice Garret thinks that it was addressed, "To any marshal or magistrate of the United States;" but it was written on a blank, which was addressed in print, "To the Commissioner of the Circuit Court of the United States for the ——— District of New York," and it is not shown that the blank address was altered or filled up. This requisition, after referring to the treaty with Prussia stipulating for the return of deserting seamen, and authorizing the consul to require the assistance of the local authorities for the search, arrest and imprisonment of deserters, represented that these seamen, naming them, and including the mate and Lutte, had deserted from

this vessel on that day; that the consul made application for a warrant to the marshal of said district to cause the men to be arrested, and "if said charge be true, that they be detained at the consul's expense until there should be an opportunity to send them back. No action was taken by the consul in regard to the master's complaint, except to deliver this requisition to the master, who, instead of presenting it to a U. S. Commissioner, took it to Justice Garret, the next morning, and thereupon Justice Garret, without examination, committed all the men to the common jail of Richmond County, his commitment stating that it was upon the complaint of the master for desertion, and containing no allusion to the consul's requisition.

On the 9th of August the master desired a release of some of the men, and the consul appears to have directed a release of them all, but no order for their return to the ship was made by the consul or asked for by the master, nor was the production of the men before the consul directed.

On the 11th of August, two policemen took the mate and three of the men from the jail to the consul's office, and were then directed to release them, and the men were advised to go on board and persuade the master to pay them their wages. The next day the remaining four were released from jail, and during the day all the men appeared at the consul's office. They were again advised to go to the ship and ask the master for their wages, but they had no money to pay their ferriages from New York to Staten Island. By putting all their means together, however, enough was found to pay the ferriage of three. Accordingly, the mate, the carpenter and Lutte went to the ship and saw the master. The mate testifies that, the captain promised to pay him and appointed the next day to meet him at the consul's.

The master admits making the appointment, and that he gave the mate his navigation book and entered in it the credits to date, but denies the promise to pay him. As to what actually took place at this interview, the witnesses differ, but the result was an arrangement to meet at the consul's office the next day. This meeting never took place. The men and the master appear to have been at the consul's during that day, but they failed to meet, although the master says that as he came down from the consul's he saw Torriff and Reischoff, two of the crew, whom he asked to return to the ship, and they laughed at him and said, "No! Not a bit of it." Subsequently, this action was commenced. Upon these facts it is contended that these seamen are

not entitled to recover their wages, admitted to have been earned in the service of this vessel, on several grounds.

Upon the merits, it is said that the wages have been forfeited by desertion.

The charge of desertion against the mate has no foundation. He left the ship openly without objection from the master, without taking any of his clothes, and with a remark, which, under the circumstances, was a notification that he was going to see the consul. He was shortly arrested and cast into prison and there kept during ten days of the extremely hot weather of last August, and then let out without a request or suggestion that he return to the vessel. Indeed, the master had expressly declared that he should not return. It is vain to contend that these facts present any of the features of desertion, so far as the mate is concerned. With regard to Lutte, the case is still stronger, for the master concedes that Lutte asked and obtained of him permission to go to the consul. He also was in a similar manner imprisoned as a deserter. With regard to the other seamen the case is simply one of leaving the ship without permission. "It has been uniformly held that it is not desertion, for the seamen to leave the vessel against orders to go before the consul at a foreign port to complain of their treatment." (1 Pars.' Mar. Law, 470, note.) In this case the men did not take their clothes. When the master gave permission to Lutte to go to the consul, they announced their intention to go too. When they left they informed the mate, who was then in command (*The Union*, Bl. & H. 563), that they were going to see the consul. Upon the evidence, I find nothing to justify the master in supposing that the men were not going to the consul, and would not return to the ship at nightfall, and yet they were all at once arrested and cast into prison; and, so far as appears, without any prior request that they return to the ship. To hold such a leaving of the ship to be desertion is impossible. But it is said that when released from jail they refused to return to duty, and are therefore deserters. There is some evidence to this effect, but it is loose, and, upon a consideration of all the evidence, I am satisfied that the master never in fact communicated to the men either an intention to forfeit their wages or a desire to have them again in his service. As to the mate, he had expressly refused to have him on board. As to Kruise and Reischhoff, he had, before the difficulty, given them to understand that they would be permitted to leave. He was half owner. His vessel was laid up to

await the result of a great war—only the services of watchmen were required on board—and he had engaged two other men for that duty. He had, therefore, no reason to desire the return of the men, and, I am satisfied, did not desire it, although he may have been quite willing to make out a case of desertion, in the hope of saving the very considerable sum due the men; but his action was such as to lead the men to suppose that their leaving the service of the ship was acquiesced in, and such, it appears, was the impression formed by the consul, for he says he told the men he was sure the captain would pay them their wages. I am, therefore, of the opinion that the connection of the men with the ship was severed by mutual consent, and consequently, they are entitled to their wages.

But if this be not so, I am of the opinion that the conduct of the master, in imprisoning these men, was unlawful, and sufficient to dissolve the contract of the mariners; and I apply to the case of these foreign seamen in an American port the same rule which our Courts have applied in cases of the imprisonment of American seamen in foreign ports. The rule is stated as follows:

“The practice of imprisoning disobedient and refractory seamen in foreign jails is one of doubtful legality. It is certainly to be justified only by a strong case of necessity. It should be used as one of safety, rather than discipline, and never applied as punishment for past misconduct.” (*The Mary*, Gilpin, 31–32.) In *Jordan v. Williams* (1 Curt. C. Cls. 81), it is stated as settled, that it is not one of the ordinary powers of a shipmaster to imprison his men on shore.

The imprisonment inflicted on these men was without justification. The only excuse for it is the occurrence on the morning of the 1st of August, above detailed, which was not a very serious matter. The men were undoubtedly wrong in appearing in the cabin, and calling in question the master's right to punish the boy; for which, perhaps, there is some palliation in the fact that, while the crew doubtless knew that by the Prussian laws corporal punishment of seamen is not permitted, they may not have known that, by the same laws, “ship boys are subject to the parental chastisement of the master.” The punishment of the boy, in this instance, was not cruel, and the men could not complain of some punishment inflicted on them for their appearance in the cabin, and their disrespectful language afterwards on deck. But there was nothing alarming in the temper of the crew; there had been no difficulty with them before this, and nothing occurred on this

day which any master of order, judgment and firmness would not have easily dealt with. No weapons were shown, no blows struck, no threats made, except that of reporting to the consul, and, if punishment was thought necessary, it should have been inflicted on board, and not by imprisonment in a foreign jail.

Neither does the master stand excused, if it be considered to have been shown that he really thought the men had left the ship, with intent to desert, for his whole conduct was unlawful. No law permits the imprisonment of deserters in our jails, except on proof of the facts before a competent tribunal. The Act of March 2d, 1829, which is the only statute enacted to render effective the provisions of Art. 11 of the treaty with Prussia, requires an application by the consul, with preliminary proofs, before a magistrate having competent jurisdiction, and the warrant of such magistrate for the arrest. The seamen can not be surrendered to the authority of the consul, until an examination be had before the magistrate, and the statement that the seaman is a deserter found to be true. And the arrest and detention of the seamen, in such cases, is not for punishment, but simply for safe-keeping until he can be sent back. Here the men were imprisoned, in the first instance, for a day and a night, upon the request of the master, without any of the preliminary proofs required by the statute, and without the interposition of the consul. And when, on the next day, the consul issued the requisition for an examination before a U. S. Commissioner, the master took it to the police justice, where it was used, apparently by way of inducement, for the imprisonment was then continued for some ten days, upon the complaint of the master, and not by virtue of the requisition. This imprisonment was, in law, the act of the master. He caused it to be done by a magistrate, known to him to be without jurisdiction. Nor can he protect himself by saying that he acted under the direction of the consul. The consul made no requisition upon the police justice, and never requested that officer to imprison the men, and his requisition is not alluded to in the commitment. He did direct somebody to release them, but it is not shown what person, other than the captain and the policeman, he so directed. It is also true that he paid the jail fees to the jailer, but there is evidence showing that his payment was for the account of the master.

If it be true, that a master is not responsible for an imprisonment inflicted by competent authorities, under the order of a consul (*The*

Coriolanus, Crabbe's R. 241; *Wilson v. The Mary*, Gilpin, 31; *Jordan v. Williams*, 1 Curt. C. Cls. 82), it is also true that he is responsible for an imprisonment inflicted, at his request, by a police justice without jurisdiction in the premises (*Snow v. Wope*, 2 Curt. C. Cls. 304).

In every aspect, then, the conduct of the master in respect to these men was unlawful, and, it appears to me, without excuse. Three of the men who have appeared before me, are men of intelligence, and of truthful appearance. The mate appears quite the equal of the master, and is, in fact, his connection by marriage. The difficulty arose in a port where there was every opportunity for protection, and for lawful investigation, and there was nothing requiring haste. Such an imprisonment, under such circumstances, I consider sufficient, within the principles of the adjudged cases, to dissolve the marines' contract, and sever the connection between the men and the vessel.

But it is said that the men contracted not to sue in a foreign country, and, therefore, this action can not be maintained. This position is based upon the words of the ship's articles or muster roll, which declare that "the seamen hire themselves on the above-mentioned vessel in accordance with the legal regulations printed in the book of Navigation." The book of Navigation referred to is a book which is furnished to every Prussian seaman, and which contains the name of the holder, with a description of his person, and memorandum of every shipment and every discharge of the holder, signed by the mustering authorities. The book contains also a printed appendix, where may be found certain extracts from the German mercantile law, among which extracts is this provision: "The seaman is not allowed to sue the master in a foreign court." Assuming that this provision of law is incorporated into the agreement, by the words used in the articles, and, therefore, to be considered as part of the contract, which is not entirely clear, the first answer is, that the provision, by its express terms, is made to relate to suits against the master, which this is not. Another answer is, that the master having, by his unlawful conduct in violation of his contract, absolved the men from their agreement, has absolved them from the whole of it, and this portion with the rest (*Schulenburg v. Wessels*, 2 E. D. Smith, R. 71).

In the English courts, a foreign statutory prohibition of this description had been considered not enforceable, unless incorporated as part of the contract (MacLachlan on Shipping, 226). In the American courts, it has been held that such a provision in the contract will not

be enforced, "where the voyage, as respects the seamen, is put an end to" (*The St. Oloff*, 2 Pet. Ad. 415); "where the interests of justice demand it" (*Barker v. Kloskyster*, Abb. Ad. 408); and "where the seamen are left destitute by an improper discharge." (*Id.* p. 408.)

Again, it is said that this is a Prussian vessel, and therefore the court is without jurisdiction in the premises by reason of the treaty between the United States and Prussia, ratified in 1828 (8 Stat. at Large, 382). This position, which has been urged upon my consideration with earnestness and ability, has received my careful consideration. The provision of the treaty is as follows: "The consuls, vice-consuls and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said consuls, vice-consuls or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country."

In considering the effect of this treaty in the present case, I remark first, that its language does not precisely cover an action *in rem* like the present.

Such an action is more than a mere difference between the master and the crew. It involves the question of lien upon the ship and her condemnation and sale to pay the same. In the absence of any express words, it is hard to infer that it was intended to confer upon consuls and vice-consuls, the power to direct a condemnation and sale of a ship—a proceeding which brings up, for determination, many questions besides those relating to seamen. Moreover, the statute of August 8, 1846, which was passed to render effective this provision of this treaty, confers upon the Commissioners of the Circuit Court full power, authority and jurisdiction to carry into effect the award, arbitration or decree of the consul, and for that purpose to issue remedial process, mesne and final, and to enforce obedience thereto by imprisonment. It certainly can not be supposed that it was the intention to give to the Commissioners of the Circuit Court power to make a decree *in rem*, and direct the sale of a ship. This position, that the

treaty is not applicable to the present case because it is a proceeding *in rem*, which did not strike me with much force upon the argument, has gained strength in my mind by reflection, and I confess that I am now inclined to the opinion that it is well taken; but I do not intend to rest my determination upon it. Nor do I discuss the position that the treaty was not intended to apply to any difference, except personal differences, between the master and the seamen alone, such as assaults and the like, and does not cover differences as to wages, to which the owners as well as the ship are always real parties.

But I pass on to consider whether the effect of this treaty is to prevent the Courts of Admiralty of the United States from taking cognizance of any action brought by seamen to recover wages earned by them on board of a Prussian vessel. At the outset, it appears strange to hear it contended that the jurisdiction of the District Courts of the United States is thus to be limited, because of an agreement arrived at between Prussia and our Government, as to the jurisdiction of our own courts. Courts are created and their jurisdiction fixed by the law-making power; and the extent of their jurisdiction does not appear to be a fit subject of an agreement with a foreign power. If, in any case, the powers exercised by the courts become a subject of discussion between our Government and a foreign nation, and any limitation of the jurisdiction, already conferred by law, be found to be desirable, the natural, if not the only way of accomplishing such a result would be by the action of the law-making power, instead of the treaty-making power. It appears reasonable, therefore, at least to require that an intention to accomplish such a result by a treaty, should be manifested by express words. The treaty under consideration contains no such definite provision. It simply declares that the consuls shall have the right to sit as judges and arbitrators in certain cases, without the interference of the local authorities, which is a very different thing from saying that the courts of the United States shall not have jurisdiction in such cases. Furthermore, the law-making power established the District Courts of the United States and the jurisdiction thereof, and gave to them, in civil cases of admiralty and maritime jurisdiction, all the judicial power vested in the national Government by the Constitution; and it is not to be lightly supposed that the President, acting with the advice of the Senate as the treaty-making power, has undertaken to repeal, *pro tanto*, an existing law relating to the jurisdiction of the courts, and to remove from the juris-

diction of the District Courts certain classes of actions, and that by reason of their subject-matter, for the provision in this treaty is not confined by its language to Prussian subjects, but applies to all seamen on Prussian vessels without regard to their nationality. It seems to me that no such intention should be imputed to the treaty, if any other can be discerned—and another, and a reasonable intention can be discerned when we consider, in connection with the treaty, the well-known practice of maritime courts in respect to actions brought by seamen to recover wages earned on foreign vessels. Such actions, Courts of Admiralty have long been accustomed to entertain, or to decline, in their discretion. Ordinarily, in the exercise of a sound discretion, they have refused to entertain such actions, when the consul of the foreign power shows reasonable grounds for such declination, and his willingness to determine the matter in controversy. (*The Nina*, W. & B. Ad. 180, n.)

Having this practice in view it may be well inferred, from the language used in this treaty, that the object of the provision in question was to insure, so far as possible, without a repeal of the existing law, a declination of such actions by the courts in all cases where the consul has acted, and perhaps also where he expresses a willingness to act, as judge or arbitrator between the parties—thus giving to the foreign nation the guarantee of this nation for the continued exercise, by the courts, of that sound discretion which has ordinarily been exercised, and committing the nation to answer any demand which might arise from any omission by its courts to exercise such a discretion in this class of cases. Such an effect given to the treaty appears to my mind to be reasonable and sufficient to accomplish all that was intended. To hold that the treaty repeals *pro tanto* the act establishing the District Courts, and ousts them of all jurisdiction in this class of cases, would permit consuls to refuse to act, and at the same time withhold from seamen—and American citizens, it may be—all right of resort to the courts of the land. It would give opportunity for great frauds, and open a wide door for the oppression of a class of men entitled by the maritime law, above all others, to the protection of maritime courts. Of the use which would be made of such a construction of the treaty, the present attempt, in violation of all law, to appropriate some \$1,100 of the earnings of these men, is not a bad illustration.

Under the view of the treaty above indicated, I am thus brought to

consider whether the evidence sustains the averment, that the consul-general of Prussia has already cognizance as a judge or arbitrator of the demand of these seamen, and makes out a case where, for that reason, this court should decline to entertain the action.

The words "judge and arbitrator," used in the treaty, must be taken in their ordinary significance. They imply investigation of the facts upon evidence, the exercise of judgment as to the effect to be given thereto and a determination therefrom. And the use of these words indicate an intention not to deprive the seamen of a full and fair hearing of their cause and a decision thereof. If such a hearing had been given these men by the consul, the case would have been different. But here nothing has been done which can in any fair sense be called a hearing of the cause. The consul has not even gone through the form of sitting as judge or arbitrator in respect to the demands of these men. He examined no witnesses, he did not bring the parties before him, and he made no definite determination whatever. The men say that he refused to hear their story at all. The mate swears that he demanded to see the captain's charge against him, and he was refused. The vice-consul denies this, and says that he did listen to the men, and because they admitted themselves deserters, there was nothing to do but to tell them that they had forfeited their wages, which he did. But he can not say what persons admitted having deserted, and on cross-examination he shows that the admission was simply an admission by some, he does not know whom, of having left the vessel without leave. He admits having urged the men to go and see the captain, and expressed confidence that if they spoke civil the master would pay them their wages, which appears to be inconsistent with the idea that he had passed on the demand and adjudged the men not entitled to any wages whatever.

The consul is not a court, and neither his record nor his testimony is conclusive on this court. He can not shut his door in the face of parties and then, by declaring that he has adjudicated upon the demand, cut them off from a resort to the courts. Before he can call upon the courts to decline to entertain the action, he must show that he has given or is willing to give, to the seamen that hearing which the treaty intends they should have. Here the vice-consul himself testifies, "No adjudication was made in writing—a memorandum only was made. It was noted on the protocol as follows: 'A requisition has been made and given to the captain to be given to the court.'" The making such an entry is not sitting as judge or arbitrator on the present demand.

To hold, on such proof, that the vice-consul has acted as judge or as arbitrator in respect to this demand, would countenance a mode of procedure which I should be sorry to see obtain. My conclusion, therefore, is that there has been no such examination and adjudication of the matter in hand by the consul as the courts require and the treaty intends to secure.

In the absence then of any legal limitation of the jurisdiction of the court by the treaty, and in the absence of any proof of such action on the part of the consul as should call upon the court to decline to entertain the action, I deem it my duty to proceed to render a decree—and I do this the more willingly because the master of this vessel is half owner of her, and is here present, where also the seamen are—and because the ship is laid up here by reason of war, nor can it be told when, if ever, she will return to her home. It is a vain thing, therefore, to say to these sailors, who, although having some \$1,100 of wages due, and unpaid, are left paupers, that they must go to Prussia, and there await the return of the ship in order to enforce their demand. If they can not now maintain this action, they are practically deprived of all remedy, and thrown upon this community penniless. Against such a result my sense of justice revolts, and I am unwilling to believe that it is compelled by the law. I, therefore, without hesitation, pronounce in this case the decree which the maritime law, applied to the facts, requires, and condemn the vessel to pay the wages of the men.

In considering this case thus far, I have treated the action of the vice-consul as equivalent to that of the consul, and have so spoken of it. In point of fact, Dr. Roesing, the consul-general who signed the requisition, which is the only official act proved, aside from the memorandum on the protocol, never saw either the master or the men, the vice-consul acting for him in everything, except signing the requisition. I have also spoken of the consul as the consul of Prussia, and have considered him to be the official referred to in the treaty with Prussia.

The point has been taken that the proofs show Dr. Roesing to be consul-general of the North German Union; that there are now no consuls of Prussia, nor any similar treaty with the North German Union. But it appears from the law, proved, that the consul of the North German Union is the consul of each power comprehended in the Union, which is a confederation rather than a Union. Besides, the executive department recognizes Dr. Roesing as the consul of Prussia, by virtue of his appointment as consul-general of the North

German Union, and the courts are bound by the action of the executive in such a matter, the question being political, and not judicial.

There remains to allude to the phase of the case which is presented by the fact that the libel is filed by Newman, the mate, to recover his own wages, and also the wages of the other men, as the assignee of their demands. So far I have treated the case as if all the men were parties libellant.

The evidence shows the execution of a formal assignment to the mate of the claims of the other men, but it also appears that the assignment was without consideration, and that the men all expect to receive whatever may be recovered as their wages. This mode of procedure to save multiplicity of suits seems to have been adopted in ignorance of the rule of the admiralty, which enables several seamen to join in one action; and the mate, upon the trial, filed a consent that the other men be now joined as colibellants, and receive in their own persons whatever might be awarded for their claims. Upon such a consent and such facts, I deem it competent to permit all the seamen to join in the action, upon petition to be made colibellants, and, on showing the cancellation of their assignments to the mate, to take a decree in their own names for the wages found due them. Two of them are minors, it is true, but, in the admiralty, minors who are mariners are permitted to sue for their wages in their own names. All seamen are in a certain sense treated as minors in maritime courts.

In accordance with these views, let a decree be entered in favor of the mate, for his wages earned in the services of this vessel, and still unpaid, with a reference to ascertain the amount, and let similar decrees be made in favor of the seamen, upon the filing of their petition, and showing the cancellation of their assignments to the mate.

For Libellants, *D. McMahon*.

For Claimant, *E. Salomon*.

EX PARTE NEWMAN¹

Certain Prussian sailors libelled a Prussian vessel in New York in admiralty for wages, less in amount than \$2,000. The master set up a provision in a treaty of the United States with Prussia, by which it was stipulated that the consuls of the respective countries should sit as judges in "differences between the crews and captains of vessels" belonging to their respective countries; and the consul of Prussia, coming into the District Court, pro-

¹181 U. S. 152. (Dec. 1871.)

tested against the District Court's taking jurisdiction. The District Court, however, did take jurisdiction, and decreed \$712 to the sailors. On appeal the Circuit Court reversed the decree, and dismissed the libel because of the consul's exclusive jurisdiction. *Held*, that mandamus would not lie to the Circuit judge to compel him to entertain jurisdiction of the cause on appeal, and to hear and decide the same on the merits thereof; and that this conclusion of this court was not to be altered by the fact that owing to the sum in controversy being less than \$2,000, no appeal or writ of error from the Circuit Court to this court existed.

PETITION for writ of mandamus to the United States Circuit judge for the Eastern District of New York; the case being thus:

The Constitution ordains¹ that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction."

The 10th article of the treaty of the United States with the King of Prussia, made May 1st, 1828,² contains this provision:

The consuls, vice-consuls, and commercial agents shall have the right as such to sit as judges, and arbitrators *in such differences* as may arise between *the captains and crews of the vessels* belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country; or the said consuls, vice-consuls, or commercial agents, should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the rights they have to resort on their return to the judicial authority of their country.

"All treaties made, or which shall be made, under the authority of the United States," it is ordained by the Constitution of the United States,³ "shall be the supreme law of the land."

With this treaty thus in force, the mate and several of the crew, all Prussians—who had shipped in Prussia on the Prussian bark *Elwine Kreplin*, under and with express reference, made in the shipping articles, to the laws of Prussia—got into a difficulty at New York with the master of the bark, who caused several of them to be arrested on charges of mutiny and desertion. They, on the other hand, took

¹Article 3, Sec 2.

²8 Stat. at Large, p. 378.

³Article 6.

the case before the Prussian consul; denying all fault on their part, and claiming wages. The vice-consul heard the case, and decided that on their own showing they had forfeited their wages by the Prussian law applied to their contract of shipment. In addition to this he issued a requisition addressed to any marshal or magistrate of the United States, reciting that the master and crew had been guilty of desertion, and requiring such marshal or magistrate to take notice of their offence.

The mate and men now filed a libel in the District Court at New York against the bark for the recovery of wages (less than \$2,000), which they alleged were due to them; and the bark was attached to answer. The master of the bark intervening for the interest of the owners answered, and set up various grounds of defence to the claim, some of which arose under the laws of Prussia, and especially he invoked the protection of the clause in the above quoted treaty between his country and this, and denied the jurisdiction of the District Court, alleging, moreover, that the matter in difference, the claim of the libellants for wages, had already in fact been adjudicated by the Prussian consul at the port of New York.

Before the cause was tried in the District Court, the consul-general of the North German Union presented to that court his formal protest against the exercise of jurisdiction by that court in the matter in difference.* He invoked therein the same clause in the treaty, and claimed exclusive jurisdiction of such matters in difference; and declared also that, before the filing of the libel the matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The District Court proceeded notwithstanding to hear and adjudge the case; placing its right to do this, on the ground that the suit before it was a proceeding *in rem* to enforce a maritime lien upon the vessel itself, and not a "difference between the captain and crew;" and, also, because the Prussian consul had no power to conduct and

*The consul-general of the North German Union was commissioned by the King of Prussia, Prussia being one of the States composing the North German Union; and by certificate of the Secretary of State of the United States, under the seal of that department, it appeared that the Executive Department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign States composing that Union, "the same as if they had been commissioned by each one of such States."

carry into effect a proceeding *in rem* for the enforcement of such a lien, and had not in fact passed at all and could not pass upon any such case. Accordingly after a careful examination of the facts, that court decreed in favor of the libellants \$712. The case then came by appeal to the Circuit Court. This latter court considered that the District Court had given to the treaty too narrow and technical a construction. The Circuit Court said:

The master is the representative in this port of the vessel and of all the interests concerned therein. He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages. That arises between the crew and the master, either as master or as the representative here of vessel and owners. The lien and the proceeding *in rem* against the vessel appertain only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as incident to the right to the wages, the lien and its enforcements against the vessel follow. The District Court can have no jurisdiction of the lien, nor jurisdiction to enforce it if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty much of its substance.

The Circuit Court adverted to and relied on the fact, that the Prussian consul had moreover actually heard the mate and sailors, and pronounced against them.

The Circuit Court accordingly, while it expressed on a general view of the merits its sympathy with the sailors, and a strong inclination to condemn the conduct of the master in the matter, yet was "constrained to the conclusion that the treaty required that the matter in difference should have been left where the treaty with Prussia leaves it, viz., in the hands and subject to the determination of their own public officer." The result was the dismissal of the libels by the Circuit Court for want of jurisdiction.

Thereupon Newman and the others, by their counsel, *Messrs. P. Phillips and D. McMahon*, filed a petition in *this* court for a writ of mandamus to the Circuit judge, commanding him "to entertain jurisdiction of the said cause on appeal, and to hear and decide the same on the merits thereof." The judge returned that the Circuit Court had entertained the appeal, and had heard counsel on all the ques-

tions raised in the case, and had decided it; and that the said court had decided that the matter in controversy was within the jurisdiction of the consul under the treaty, and that in the exercise of the jurisdiction so given him, he had decided the matter, and that therefore the court had dismissed the libel.

The question now was whether the mandamus should issue.

The reader will of course remember the provision in the 13th section of the Judiciary Act, by which it is enacted:

That the Supreme Court shall have power to issue writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed or persons holding office under the authority of the United States.

And also the provision of the 22d section, extended by an act of 1803 to appeals in admiralty, by which it is enacted:

That final judgments and decrees in civil actions . . . in a Circuit Court . . . removed there by appeal from a District Court, where the matter in dispute exceeds the sum or value of \$2,000, exclusive of costs, may be reëxamined and reversed or affirmed in the Supreme Court.

Messrs. D. McMahon and P. Phillips, in support of the motion:

The mandamus should issue:

1st. Because the treaty stipulation is unconstitutional. It strips the courts of the United States of the admiralty jurisdiction conferred on them by the Constitution of the United States. It is well settled that admiralty courts have jurisdiction, at their discretion, over foreign vessels within their jurisdiction, and actions *in rem* against them brought by foreign seamen. If then the treaties attempt to confer on a foreign officer exclusive jurisdiction of cases already within the control of admiralty, they violate the Constitution, and are so far null.

2d. The treaty with Prussia has no reference to suits or proceedings *in rem*, and in that respect differs from the case mentioned in the treaty, of a difference between the master and seamen. The proceeding is against the vessel to foreclose a lien, and the owners are brought in incidentally. The master, as such, has no interest, nominal or otherwise, in the suit in question, and it is a misnomer to call the present case a controversy between a master and his crew.

3d. The Prussian consul made no adjudication in the matter *now* in difference, between the libellants and the master.

4th. The treaty is with the kingdom of Prussia, and the tribunals referred to in it are the consuls, vice-consuls, and commercial agents of that government. Now, at the time of the occurrence of the facts here in controversy, there were no consuls, or vice-consuls, or commercial agents of the kingdom of Prussia in the city of New York, or in the United States, though there are such officers of the North German Union. A treaty stipulation to maintain tribunals independent of our own, in this country, is contrary to the spirit of our institutions, as its effect may be to create in our midst many tribunals independent of our national courts. It should, therefore, be construed strictly.

5th. The consul is estopped from asserting his exclusive jurisdiction, because that he appealed in his "requisition" to our marshals and other magistrates, and prayed them to take cognizance of the case. He can not be permitted after doing so, to avail himself of the benefit of the treaty stipulations.

Messrs. Salomon and Burke, contra:

This is an attempt to cause this court to review the decision already rendered in the Circuit Court and to direct the Circuit judge to change his decision, and to render a different judgment in a case which can not be brought before this court by appeal, because the amount in controversy is less than \$2,000. This can not be done.

Mandamus can not perform the functions of a writ of error or of an appeal. This court will never direct in what manner the discretion of an inferior tribunal shall be exercised; but will only, in a proper case, require the inferior court to decide. If the Circuit judge had refused to decide the case, or to enter a decree therein, this court might compel him by mandamus to decide or to enter a decree; but even then it could not by such process have commanded him how to decide it, or what decree to enter. A revision of his judicial decision can only take place by appeal. But here the applicants do not complain that the judge has refused to decide the case, or that he has refused to enter judgment, but they complain that his decision upon some of the questions involved therein, and which were fully argued before, and have been carefully considered and adjudged by him, is

erroneous, and that consequently this court should overrule his judgment in this case.

Now, strictly speaking, this court can not look into the opinion of the Circuit judge for the purpose of ascertaining on what ground his decision is based with a view of revising it.

It can look only to the record, which shows only that the Circuit Court has entertained the appeal, heard and tried it, and upon such hearing and trial, after due consideration, has ordered that the decree of the District Court be reversed and the libel dismissed. How can this court, then upon an application for a mandamus, compel him to decide differently?

But, waiving this, no doubt the question arising under the treaty with Prussia has from the beginning been the material question in the controversy. That under the treaty the Prussian consul had exclusive jurisdiction, and had exercised that jurisdiction and decided between the parties, was set up by the claimant in his answer; it was brought before the District Court by the consul's protest; upon that, mainly, the appeal was taken to the Circuit Court. The question involved not only the proper construction of the treaty, but also the examination and adjudication of important facts and circumstances relating to the consul's action in the case. All the points were argued before the Circuit Court, and that court, after consideration, has decided upon the facts and the law. This is in no proper sense a case in which the Circuit Court has refused to entertain or to exercise jurisdiction. It has, in fact, entertained the appeal from the decree of the District Court, and upon consideration has decided that the decree appealed from should be reversed, on three grounds:

First. That under the treaty with Prussia, the Prussian consul had jurisdiction of the matter in difference involved in the litigation.

Second. That that jurisdiction of the Prussian consul was exclusive.

Third. Upon the proofs the court found and decided, that the Prussian consul *had* adjudicated the matter in difference involved in the litigation, and that the libellants were bound by that adjudication.

If this court can by mandamus review this decision of the Circuit Court, then it can in this manner review every case in which a suit is dismissed on the ground of a former adjudication of the subject-matter between the same parties.

Admiralty courts generally decline to interfere between foreigners concerning seamen's wages, except where it is manifestly necessary to do so to prevent a failure of justice, and then only where the voyage has been broken up, or the seamen have been discharged.* Now, if for this reason, in the proper exercise of his judicial discretion, the Circuit judge, on appeal, had ordered a dismissal of the libel, can it be maintained that by mandamus this court could compel him to reverse his own decision? *Non constat* that, if the Circuit judge had not ordered the dismissal of the libel on account of the treaty and the exercise of the consular jurisdiction, he would not have so ordered on this ground of comity between nations.

The application is for a mandamus directing the Circuit judge to hear the appeal and to decide the same on the merits thereof. What are the *merits* of the controversy? Is not this question of the jurisdiction of the Prussian consul and his decision a part of them? Will this court, by mandamus, determine what is and what is not of "the merits of a controversy?"

Reply: The law will leave no one remediless, and the amount in controversy not being \$2,000, and no appeal existing, and there being no other remedy, the remedy in the premises must be by mandamus. The writ is issued to inferior courts to enforce the due exercise of these judicial powers; "and this not only by restraining their excesses, but also by quickening their negligence and obviating their denial of justice."¹ While this court will not restrain nor direct by mandamus in what manner the discretion of the inferior tribunal should be exercised, it will, in proper cases, require the court to hear and decide. The "principles and usages of law," give the right to a mandamus where a party has a legal right, and no other remedy to enforce it.²

In the case at bar the proposed mandamus does not usurp the functions of a writ of error or appeal, for no appeal lies, the amount being less than \$2,000.

The case is this. The Circuit judge refuses to consider and determine, on the merits, a cause over which he has ample jurisdiction, he entertaining the opinion that he has no jurisdiction, because of the

**Gonzales v. Minor*, 2 Wallace, Jr., 348.

¹*Ex parte Bradley*, 7 Wallace, 375.

²Phillips's Practice, 230.

terms of treaty with Prussia, In this court it is submitted that his conclusion is erroneous. No appeal, however, lies. A Circuit judge entertaining very strict notions of the extent of admiralty jurisdiction, might, in a contest between State and National courts, paralyze the commerce of a great commercial port like New York. Can there be no correction for this? Is a party to be dismissed in a case like this, with the allegation that the writ of mandamus can not usurp the function of a writ of error, therefore there is no correction?

While it is conceded that the writ of mandamus can not be used to correct an erroneous judgment of a court of acknowledged jurisdiction, yet it can be invoked to compel a court to exercise its jurisdiction, even though such court be of the opinion it had not jurisdiction. The distinction between the two classes of cases is obvious. The distinction lies between a direction to an inferior tribunal to act, and direction to it how to act. We do not seek to control the Circuit Court's judgment by the mandamus, but only to compel it to entertain jurisdiction of the cause, and then to hear and decide according to the law and the allegations and proofs.

Authorities are clear on the right of a superior tribunal to compel an inferior tribunal to hear a cause and decide it even after the latter has declined to entertain the cause because of an alleged want of jurisdiction.*

Mr. Justice CLIFFORD delivered the opinion of the court.

Attempt was made in the first place to prosecute the suit in the name of the mate for himself and as assignee of the crew, but the court before entering the decree suggested an amendment, and the crew were admitted as colibellants, which will render it unnecessary to make any further reference to that feature of the pleadings.

Proceedings *in rem* were instituted in the District Court against the bark Elwine Kreplin, by the mate, for himself and in behalf of the crew of the bark, on the twenty-fourth of August, 1870, in a case of subtraction of wages civil and maritime, and they allege in the libel, as amended, that the bark is a Prussian vessel, and that they are Prussian subjects, and that they were hired by the master and legally shipped on board the bark for a specified term of service, and that they con-

**Rex v. Justices of Kent*, 14 East, 395; *Hull v. Supervisors of Oneida*, 19 Johnson, 260; *Judges of Oneida County v. The People*, 18 Wendell, 92 and 95.

tinued well and truly to perform the duties they were shipped to fulfil, and that they were obedient to the lawful commands of the master, until they were discharged. They also set forth the date when they were shipped, the length of time they had served, the wages they were to receive, and the amount due and unpaid to them respectively for their services, and aver that the owners of the bark refuse to pay the amount.

Process was issued and served by the seizure of the bark, and the master appeared, as claimant, and filed an answer. He admits that the appellants shipped on board the bark at the place and in the capacities and for the wages alleged in the libel, but he avers that they signed the shipping articles and bound themselves by the rules, regulations, and directions of the shipping law and rules of navigation of the country to which the bark belonged, and he denies that they well and truly performed their duties, or that they were obedient to his lawful commands. On the contrary, he alleges that they, on the day they were discharged, were guilty of gross insubordination and mutinous conduct, that they resisted the lawful commands of the master, and refused to obey the same, and interfered with him in the performance of his duty, and with force and threats prevented him from performing the same, and thereafter, on the same day, deserted from the vessel.

Apart from the merits he also set up the following defences:

1. That the court had no jurisdiction of the matter contained in the libel, because the bark was a Prussian vessel, owned by Prussian citizens, and because the libellants were Prussian subjects belonging to the crew of the vessel, and were also citizens of that kingdom.

Support to that defence is derived from the tenth article of our treaty with that government, which provides that consuls, vice-consuls, and commercial agents of the respective countries, in the ports of the other, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country, or the consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect.*

*8 Stat. at Large, 382.

He set up that provision of the treaty, and prayed that he might have the same advantage of it as if the same was separately and formally pleaded to the libel.

2. That the libellants in signing the shipping articles bound themselves, under the penalty of a forfeiture of wages, not to sue or bring any action for any cause, against the vessel, or the master, or owners thereof, in any court or tribunal except in those of Prussia.

3. That the consul-general of the North German Union, resident in the city of New York, which Government included Prussia and other sovereignties, heard and examined the questions of difference between the libellants and the claimant and adjudicated the same; that the libellants appeared before the court on the occasion and presented their claim to be discharged and their claim for wages, and that the consul, in his character as such, heard and examined their said claims and adjudged that the libellants should return to the vessel, and that no wages were due them or would be due them until they complied with the contract of shipment.

Testimony was taken in the District Court, and the District Court entered a decree in favor of the libellants for the amount due them for their wages, and referred the cause to a commissioner to ascertain and report the amount. Subsequently he reported that the amount due to the libellants was seven hundred and forty-three dollars and forty-one cents. Exceptions were filed by the claimant, and the District Court upon further hearing reduced the amount to seven hundred and twelve dollars and thirty-two cents, and entered a final decree for that amount, with costs of suit. Thereupon the claimant appealed to the Circuit Court, and the record shows that the appeal was perfected, and that the cause was duly entered in that court.

On the fifth of the last month the petition under consideration was filed in this court in behalf of the appellees in that suit, in which they represented that the cause appealed was fully argued before the Circuit Court on the same pleadings and proofs as those exhibited in the District Court, and that the Circuit judge reversed the decree of the District Court and dismissed the libel for want of jurisdiction in the District Court to hear and determine the controversy; that the Circuit judge declined to entertain the cause or to consider the same on the merits, and that no final decree on the appeal has been entered in the Circuit Court or signed by the Circuit judge.

His refusal to entertain jurisdiction and to hear and decide the

merits of the case was placed, as they allege, upon the ground that the matter in difference, under the tenth article of the treaty, was within the exclusive cognizance of the consul, vice-consul, or commercial agent therein described, and in consequence thereof that the District Court was without any jurisdiction, which they contend is an error for the following reasons:

(1.) Because the treaty stipulation, if so construed, is unconstitutional and void.

(2.) Because that article of the treaty applies only to disputes between the masters and crews of vessels, and has no reference to suits *in rem* against the vessel.

(3.) Because the record in this case shows that the Prussian authorities refused to entertain jurisdiction of the controversy.

(4.) Because the treaty is with Prussia, and it appears that her government has no consul, vice-consul, or commercial agent at that port.

(5.) Because that the consul who acted in the case requested the District Court to take jurisdiction of the matter in difference.

Hearing was had on the day the petition was presented, and this court granted a rule requiring the Circuit judge to show cause on the day therein named why a peremptory writ of mandamus should not issue to him directing him to hear the appeal of the petitioners and decide the same on the merits. Due service of that rule was made, and the case now comes before the court upon the return of the judge to that rule. He returns, among other things not necessary to be reproduced, as follows: That the cause of the libellants proceeded to a decree in their favor in the District Court; that an appeal from that decree was taken in due form to the Circuit Court for that district; that the Circuit Court did not refuse to entertain the appeal nor did the Circuit Court refuse to decide the case on the appeal nor hold or decide that the Circuit Court had no jurisdiction to hear or decide the same, as required by the proofs or by the law. On the contrary, the Circuit Court did entertain the appeal, did hear the counsel of the parties fully on all the questions raised in the case, and did decide the same. But in making such decision the said court did hold and decide that the matter in controversy was within the jurisdiction of the consul, under the treaty, and that the consul, in the exercise of that jurisdiction, after hearing the parties, had decided the matter. Pur-

suant to those views the Circuit Court, as the return shows, did thereupon direct that the decree of the District Court be reversed, and that the libel of the petitioners be dismissed.

Power to issue writs of mandamus to any courts appointed under the authority of the United States was given to this court by the thirteenth section of the Judiciary Act, in cases warranted by the principles and usages of law.* When passed, the section also empowered the court to issue such writs, subject to the same conditions, to persons holding office under the United States, but this court, very early, decided that the latter provision was unconstitutional and void, as it assumed to enlarge the original jurisdiction of the court, which is defined by the Constitution.¹

Applications for a mandamus to a subordinate court are warranted by the principles and usages of law in cases where the subordinate court, having jurisdiction of a case, refuses to hear and decide the controversy, or where such a court, having heard the cause, refuses to render judgment or enter a decree in the case, but the principles and usages of law do not warrant the use of the writ to reexamine a judgment or decree of a subordinate court in any case, nor will the writ be issued to direct what judgment or decree such a court shall render in any pending case, nor will the writ be issued in any case if the party aggrieved may have a remedy by writ of error or appeal, as the only office of the writ when issued to a subordinate court is to direct the performance of a ministerial act or to command the court to act in a case where the court has jurisdiction and refuses to act, but the supervisory court will never prescribe what the decision of the subordinate court shall be, nor will the supervisory court interfere in any way to control the judgment or discretion of the subordinate court in disposing of the controversy.² Where a rule is laid, as in this case, on the judge of a subordinate court, he is ordered to show cause why the peremptory writ of mandamus shall not issue to him, commanding him to do some act which it is alleged he has power to do, and which it is his duty to do, and which he has improperly neglected and refused

*1 Stat. at Large, 81.

¹*Marbury v. Madison*, 1 Cranch, 175; *Ex parte Hoyt*, 18 Peters, 290.

²*Insurance Co. v. Wilson*, 8 Peters, 302; *United States v. Peters*, 5 Church, 135; *Ex parte Bradstreet*, 7 Peters, 648; *Ex parte Many*, 14 Howard, 24; *United States v. Lawrence*, 3 Dallas, 42; *Commissioner v. Whitely*, 4 Wallace, 522; *Insurance Co. v. Adams*, 9 Peters, 602.

to do, as required by law. Due service of the rule being made the judge is required to make return to the charge contained in the rule, which he may do by denying the matters charged or by setting up new matter as an answer to the accusations of the relator, or he may elect to submit a motion to quash the rule or to demur to the accusative allegations. Matters charged in the rule and denied by the respondent must be proved by the relator, and matters alleged in avoidance of the charge made, if denied by the relator, must be proved by the respondent.¹ Motions to quash in such cases are addressed to the discretion of the court, but if the respondent demurs to the rule, or if the relator demurs to the return the party demurring admits everything in the rule or the return, as the case may be, which is well pleaded, and if the relator elects to proceed to hearing on the return, without pleading to the same in any way, the matters alleged in the return must be taken to be true to the same extent as if the relator had demurred to the return.² Subordinate judicial tribunals, when the writ is addressed to them, are usually required to exercise some judicial function which it is alleged they have improperly neglected or refused to exercise, or to render judgment in some case when otherwise there would be a failure of justice from a delay or refusal to act, and the return must either deny the facts stated in the rule or alternative writ on which the claim of the relator is founded, or must state other facts sufficient in law to defeat the claim of the relator, and no doubt is entertained that both of those defences may be set up in the same return, as in the case before the court.³ Several defences may be set up in the same return, and if any one of them be sufficient the return will be upheld.⁴

Evidently the District judge was inclined to adopt the proposition, advanced by the libellants, that the suit for wages, as it was prosecuted by a libel *in rem*, was not within the treaty stipulation, nor a contro-

¹Angell & Ames on Corporations, 9th ed. Sec. 727; *Caggar v. Supervisors*, 2 Abbott's Practice, N. S. 78.

²Tapping on Mandamus, 347; Moses on Mandamus, 210; *Com. Bank v. Commissioners*, 10 Wendell, 25; *Ryan v. Russel*, 1 Abbott's Practice, N. S. 230; *Hanahan v. Board of Police*, 26 New York, 316; *Middleton v. Commissioners*, 37 Pennsylvania State, 245; 3 Stephens's *Nisi Prius*, 2326; 6 Bacon's Abridgment, ed. 1856, 447.

³*Springfield v. Harnden*, 10 Pickering, 59; *People v. Commissioners*, 11 Howard's Practice, 89; *People v. Champion*, 16 Johnson, 61.

⁴*Wright v. Fawcett*, 4 Burrow, 2041; Moses on Mandamus, 214.

versy within the jurisdiction of the consul, but he did not place his decision upon that ground. He did, however, rule that the treaty did not have the effect to change the jurisdiction of the courts, except to require them to decline to hear matters in difference between the masters and crews of vessels in all cases where the consul had acted or perhaps was ready to act as judge or arbitrator in respect to such differences. Beyond doubt he assumed that to be the true construction of the treaty, and having settled that matter he proceeded to inquire whether the consul had adjudicated the pending controversy, or whether the evidence showed that he was ready to do so, and having answered those inquiries in the negative he then proceeded to examine the pleadings and proofs, and came to the conclusion in the case which is expressed in the decree from which the appeal was taken to the Circuit Court.

All of those matters were again fully argued in the Circuit Court, and the Circuit judge decided to reverse the decree of the District Court upon the following grounds: (1.) That the Prussian consul, under the treaty, had jurisdiction of the subject-matter involved in the suit in the District Court. (2.) That the jurisdiction of the consul under the treaty was exclusive. (3.) That the proofs showed that the consul heard and adjudicated the matter involved in the suit appealed to the Circuit Court, and that the libellants were bound by that adjudication.

Such questions were undoubtedly raised in the pleadings, and it is equally certain that they were decided by the District Court in favor of the libellants. Raised as they were by the pleadings, it can not be successfully denied that the same questions were also presented in the Circuit Court, and in view of the return it must be conceded that they were decided in the latter court in favor of the respondent. Support to that proposition is also found in the opinion of the Circuit judge, and in the order which he made in the case. Suffice it, however, to say, it so appears in the return before the court, and this court is of the opinion that the return, in the existing state of the proceedings, is conclusive.

Confessedly the petitioners are without remedy by appeal or writ of error, as the sum or value in controversy is less than the amount required to give that right, and it is insisted that they ought on that account to have the remedy sought by their petition. Mandamus will not lie, it is true, where the party may have an appeal or writ of error,

but it is equally true that it will not lie in many other cases where the party is without remedy by appeal or writ of error. Such remedies are not given save in patent and revenue cases, except when the sum or value exceeds two thousand dollars, but the writ of mandamus will not lie in any case to a subordinate court unless it appears that the court of which complaint is made refused to act in respect to a matter within the jurisdiction of the court and where it is the duty of the court to act in the premises.

Admiralty courts, it is said, will not take jurisdiction in such a case except where it is manifestly necessary to do so to prevent a failure of justice, but the better opinion is that, independent of treaty stipulation, there is no constitutional or legal impediment to the exercise of jurisdiction in such a case. Such courts may, if they see fit, take jurisdiction in such a case, but they will not do so as a general rule without the consent of the representative of the country to which the vessel belongs, where it is practicable that the representative should be consulted. His consent, however, is not a condition of jurisdiction, but is regarded as a material fact to aid the court in determining the question of discretion, whether jurisdiction in the case ought or ought not to be exercised.*

Superior tribunals may by mandamus command an inferior court to perform a legal duty where there is no other remedy, and the rule applies to judicial as well as to ministerial acts, but it does not apply at all to a judicial act to correct an error, as where the act has been erroneously performed. If the duty is unperformed and it be judicial in its character the mandate will be to the judge directing him to exercise his judicial discretion or judgment, without any direction as to the manner in which it shall be done, or if it be ministerial, the mandamus will direct the specific act to be performed.¹

Power is given to this court by the Judiciary Act, under a writ of error, or appeal, to affirm or reverse the judgment or decree of the Circuit Court, and in certain cases to render such judgment or decree as the Circuit Court should have rendered or passed, but no such power is given under a writ of mandamus, nor is it competent for the superior tribunal, under such a writ, to reexamine the judgment or decree

*2 *Persons on Shipping*, 224; *Lynch v. Crowder*, 2 Law Reporter, N. S. 355; *Thompson v. Nanny, Bee*, 217; *The Bee, Ware*, 332; *The Infanta*, Abbott's Admiralty, 263.

¹*Carpenter v. Bristol*, 21 Pickering, 258; Angell & Ames on Corporations, 9th ed., Sec. 720.

of the subordinate court. Such a writ can not perform the functions of an appeal or writ of error, as the superior court will not, in any case, direct the judge of the subordinate court what judgment or decree to enter in the case, as the writ does not vest in the superior court any power to give any such direction or to interfere in any manner with the judicial discretion and judgment of the subordinate court.¹

Viewed in the light of the return, the court is of the opinion that the rule must be discharged and the

Petition denied.

Case No. 4,426

THE ELWINE KREPLIN²

[9 Blatchf. 438]³

Circuit Court, E. D. New York. Feb. 23, 1872.⁴

CONSTITUTIONAL LAW—EFFECT OF EXPRESS PROVISIONS OF FOREIGN TREATY UPON
JURISDICTION OF LOCAL COURTS

Article 10 of the treaty between the United States and the king of Prussia, of May 1, 1828 (8 Stat. 378, 382), provides, that the consuls, vice-consuls and commercial agents of each party "shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belong to the nation whose interests are committed to their charge, without the interference of the local authorities," subject to the right of the contending parties "to resort, on their return, to the judicial authority of their country," and to the right of the consuls, vice-consuls or commercial agents to require the assistance of the local authorities, "to cause their decisions to be carried into effect or supported." The crew of a Prussian vessel sued her *in rem*, in admiralty, in the district court, to recover wages alleged to be due to them. The master of the vessel answered, denying the debt, invoking the protection of said treaty, denying the jurisdiction of the court, and averring that the claim for wages had already been adjudicated by the Prussian consul at New York. The consul also protested formally to the

¹*Ex parte Crane*, 5 Peters, 194; *Ex parte Bradstreet*, 7 Id. 634; *Insurance Co. v. Wilson*, 8 Id. 304; *Ex parte Many*, 14 Howard, 25.

²8 Federal Cases, 588.

³[Reported by Hon. Samuel Blachford, District Judge, and here reprinted by permission.]

⁴[Reversing *The Elwine Kreplin*, Case No. 4,427.]

court against the exercise of its jurisdiction. The case was tried in the district court, and it appeared that the consul had adjudicated on the claim for wages. The district court decreed in favor of the libellants: *Held*, that the district court had no jurisdiction of the case.

[Cited in *The Belgenland v. Jensen*, 114 U. S. 364, 5 Sup. Ct. 864; *Re Aubrey*, 26 Fed. 851; *Davis v. The Burchard*, 42 Fed. 608; *The Welhaven*, 55 Fed. 81.]

[Appeal from the district court of the United States for the eastern district of New York.]

[This was a case of subtraction of wages, instituted by Max Newman, the chief mate of the Prussian bark *Elwine Kreplin*, to recover the sum of \$173, amount of wages due; also \$1,158, the aggregate amount of the wages of the crew, which he claimed to recover as assignee. In the district court a decree was given in favor of the mate (Case No. 4,427), whereupon this appeal is prosecuted.]

Dennis McMahon, for libellants.

Edward Salomon, for claimants.

WOODRUFF, Circuit Judge. By the tenth article, of the treaty made by the United States with the king of Prussia, on the 1st of May, 1828 (8 Stat. 378, 382), it is provided, that "the consuls, vice-consuls, and commercial agents,"—which each of the parties to the treaty is declared entitled to have in the ports of the other—"shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities. * * * It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country." To this general rule there is a qualification: "Unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance" (the assistance of the local authorities), "to cause their decisions to be carried into effect or supported." This treaty is, by the constitution of the United States, the law of the land, and the courts of justice are bound to observe it. When a case arises which is within this provision of the treaty, jurisdiction thereof belongs to the consul, vice-consul or commercial agent of the nation whose interests are committed to his charge, and with the exercise of that jurisdiction the local tribunals

are not at liberty to interfere, unless such consul, vice-consul, or commercial agent requires their assistance, to cause their decision to be carried into effect or supported.

In the present case, the mate and several of the crew of the barque *Elwine Kreplin* prosecuted their libels against the vessel, in the district court, for the recovery of wages alleged to be due to them, which the master of the vessel denied to be due, upon various grounds; and the vessel was attached to answer. The master of the barque, intervening for the interest of the owner, sets up, in his answer, various grounds of defence to the claim, some of which arise under the laws of Prussia; and, especially, he invokes the protection of the treaty above-mentioned, and denies the jurisdiction of the district court, alleging, moreover, that the matter in difference—the claim of the libellants for wages—has already, in fact, been adjudicated by the Prussian consul at the port of New York. Before the cause was tried in the district court, the consul-general of the North German Union presented to the district court his formal protest against the exercise of jurisdiction by that court in the matter in difference. He invoked therein the treaty above referred to, and claimed exclusive jurisdiction of such matter in difference; and he also declared, that, before the filing of the libel, the said matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The barque is a Prussian vessel, the mate and crew are Prussian seamen, who shipped in Prussia, under and with express reference to the laws of Prussia, referred to in the shipping articles, and it should be assumed, that the treaty which binds this nation and its citizens and seamen, binds also Prussia and her subjects and seamen. The consul-general of the North German Union is commissioned by the king of Prussia, and, by certificate of the secretary of state of the United States, under the seal of that department, it appears, that the executive department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign states composing that Union, “the same as if they had been commissioned by each one of such states.” The kingdom of Prussia is one of the states composing the North German Union. The treaty does not require that the consuls, vice-consuls, &c., should bear any specific name. It is sufficient, that the “interests” of Prussia “are committed

to their charge," and quite sufficient, that the government of the United States, by its executive, recognizes the consul as consul of the kingdom of Prussia.

The discussion of the case at the hearing on the appeal, was, on the part of the libellants, very largely devoted to the merits of the claim for wages, upon principles applicable, it may be, to the subject, if no such treaty was in force, and under decisions of our courts in reference to the rights and duties of seaman and master, the effect of the misconduct of either upon the obligation of the other, for the purpose of showing that the treatment of the libellants by the master exonerated them from their duty to serve according to the terms of the shipping articles, and also from all others of its stipulations, even from such as arise from the laws of Prussia forming a part of the terms, stipulations, and conditions which enter into the relation of the crew to the master and owners, and to the vessel. That discussion was very full, and was presented, in argument, with great ability, by the counsel for the libellants. With most of the rules of the law invoked by the counsel, when considered apart from and independent of any treaty stipulation, the claimants have no contest; and they are, no doubt, settled, by the cases cited. But the prior question of jurisdiction must be determined, before it is competent even to enquire into the merits of the libellants' claim to recover their wages.

In the first instance, it would seem clear, that a claim of the crew of a Prussian vessel to recover wages which the master of the vessel either denied to be due, or refused to pay, was, *par eminence*, a matter in difference between the captain and crew, which, by the very terms of the treaty, the Prussian consul or vice-consul had jurisdiction, as judge or arbitrator, to determine, "without the interference" of the courts of this country; and such jurisdiction, when it exists, is, by such terms as these, exclusive. It is, however, claimed, that the present cause is not at all embraced within the treaty, for the reason, that it is a proceeding *in rem*, to enforce a maritime lien upon the vessel itself, and not a difference between the captain and crew; and, also, because the Prussian consul has no power to conduct and carry into effect a proceeding *in rem* for the enforcement of such a lien.

The treaty can receive no such narrow and technical construction. The master is the representative, in this port, of the vessel, and of all the interests concerned therein. He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages.

That arises between the crew and the master, either as master, or as the representative here of vessel and owners. It is precisely that which is in litigation in this case. The lien, and the proceeding *in rem* against the vessel, appertain to the remedy, and only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as incident to the right to the wages, the lien and its enforcement against the vessel follow. The district court can have no jurisdiction of the lien, nor jurisdiction to enforce it, if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty very much of its substance. The existence of any lien, and of any right to charge the vessel, is in difference here. To say, that the treaty gives the consul jurisdiction of claims against the master *in personam*, and does not include a claim to remove the vessel itself from his custody, as the owner *pro hac vice*, or as the representative of all the interests therein, that the voyage may be broken up, and the vessel sold for the wages of the crew, and that an effort, by judicial proceeding, to do this, is not included in the terms, a difference arising between captain and crew, seems to me to destroy the very substance of the stipulation, and defeat its obvious purpose, to confine both masters and crews of Prussia to the rights and obligations of the Prussian laws, and compel obedience to its mandates. And, be it observed, the treaty gives the same protection to, and requires the like obedience by, the masters and crews of vessels of the United States. It does not add to the legal reasons for this view, but, if a vessel of the United States were sold in a port in Prussia, to pay the wages of its crew, alleged by the master not to be payable, and in repudiation of any right of the United States consul at that port to act as judge or arbitrator upon that claim, it would, at least, stimulate our quickness of apprehension to discover, and would incline us to insist, that the treaty intended to protect our shipowners against the application of foreign laws, and the decisions of foreign courts, to our vessels and the relations of the master and crews thereof.

To the suggestion, that the consul has no power to enforce the maritime lien, and cause the vessel to be sold, to satisfy the wages, if he should find that wages are due and payable, it is sufficient to say, that the treaty has been deliberately entered into, and has become the law for both nations. Each preferred to employ its own officers. The

power given to consuls to act as judge or arbitrator is not made final. The parties have the right of resort to the tribunals of their own country, without being concluded by the decisions of the consul. This was deemed a sufficient protection, and to afford, for the time being, a sufficient remedy to both master and crew; and it is not for this court to say, that the remedy here, by attachment of the vessel, will be more efficient and useful, and, on that ground, to apply it. Besides, this court can not know that the remedy by resort to the vessel is not, if it exists, so regulated in Prussia, that it was intended that her seamen should not invoke against the vessel the remedies permitted by our laws, under the mode of administration and rules of decision by which our courts are governed. And, further, under the expressed exception, which permits resort to local tribunals by consuls, &c., who may require their assistance to cause their decisions to be carried into effect or supported, it is plausible, at least, to say, that, if the consul decide, on a difference between captain and crew, that wages are payable, the power of the court to attach and condemn the vessel for their payment may be invoked to support and give effect to such decision.

Again, it is said, that, in this case, the captain and crew were not confronted before the counsel, witnesses were not examined, no adjudication in writing was made, but the consul only orally declared his judgment of the matter in difference, after hearing the statement of the master and the statement of the libellants, and then declared that he had nothing further to do therein. The proceeding does not, it is true, conform to our ideas of the requisites of a judicial proceeding; but, are the courts of this country to prescribe to the Prussian consul the forms and modes of proceeding which he must adopt when he acts as a judge or arbitrator between master and crew under this treaty? Must he follow the practice, and be governed by the rules, governing trials and arbitrations under our laws? Must our consuls in Prussia follow the rules and practice of the courts of that kingdom? If so, then the district court here was sitting as a court of error, to review the judgment or award of the Prussian consul. What can this court say are the formal requisites of a Prussian arbitration? It is manifest, by the reservation of the right to resort to the judicial tribunals of the home country, without being concluded by the decision of the consul, that the proceeding before him as an arbitrator or judge was intended to be summary, and its conduct left very much in his discretion; and, especially, it is manifest, that the nations respectively in-

tended to confide in their consul, and temporarily entrust to him the adjustment of differences between officer and crew of their vessel in the port of the other, and it was not intended that the courts of such other nation should sit in judgment upon the form or regularity, or the justice, of the acts of the consul, or interfere therewith in any manner. It was deemed safe and proper to leave to such consuls this temporary administration of the interests of their seamen abroad, assured that they would act with fairness and integrity therein, but yet giving the right of full and final investigation and adjudication at home, where home laws, home remedies, and home modes of investigation could be resorted to. The district court here not only passed upon the requisites of the proceeding as judicial, or as an arbitrament, but assumed to inquire into the details of the evidence, and the truth of the declared grounds upon which the vice-consul testified that he acted, and which he says were before him in the admissions of the crew—thus, in effect, reviewing the law and the facts which the consul made the basis of his decision.

It is claimed, that the consul did not act as judge or arbitrator to determine this case, and that, he not having taken jurisdiction, a proceeding in our courts is no interference in disregard of the treaty. It is by no means clear, that the attachment of the vessel, on the libel of the crew, is not, in itself, such an interference as precludes the action of the consul. But in this case, the argument disregards the clearly established fact, that the consul or his vice-consul (who is, in terms, included in the treaty, and whose acts in the matter the consul recognizes), did hear the parties respectively. On the statement of the case by the crew (who, whichever of them was the first speaker, had the opportunity to tell their story), he pronounced against them. On their own story, he decided that they had forfeited their wages, by the Prussian law, applied to their contract of shipment; and, afterwards, when this suit was commenced, he formally represents to the court, that he had already adjudicated the matter in difference, and claimed that his jurisdiction for that purpose is exclusive of the courts of this country. It was after such declaration of his decision to the crew, that he, knowing that the vessel was laid up, advised them to see the captain, and, by civil and conciliatory deportment, induce him to waive the forfeiture and pay the wages which had accrued. In the situation in which the vessel and her master then were, it is obvious, that, if the men had forfeited their wages (of which I here express

no opinion), their acts had wrought no great harm, the captain had no present need of the services of so many, and many considerations might properly have moved him to pay their wages and let them go. The advice of the consul indicated that he thought the loss of their service was no inconvenience to the captain and, even if wrong therefore, they had claims to his consideration, while destitute and in a foreign country, which might and, perhaps, ought to induce him to pay their wages. This is all there is of the argument, that the consul himself regarded the crew as practically discharged.

I do not propose to examine the merits of the libellants' claim for wages. That they were, on the requisition of the consul, and without sufficient grounds therefor, held in prison as deserters, is most probable. That their departure from the vessel, and going ashore without leave, and against the will of the master (save as to one, who had his consent), is not desertion by our law, unless it was done without the intention to return, is, no doubt, true. That the master did not, in fact, consent to the discharge of any of them, is, I think, clear, while I think it in the highest degree probable, that, if this difficulty had not arisen, he would, in view of the laying up of the vessel, have consented to part with most of them.

I do not think it certain, that an imprisonment, on the requisition of the consul, though induced by a statement of the facts by the captain, operated to discharge the seamen from their articles, even though the imprisonment was not warranted by the facts. *Jordan v. Williams* [Case No. 7,528]. Nor is it certain that, under this treaty, and the act of March 2, 1829 (4 Stat. 359), a state magistrate can have no jurisdiction to arrest and detain a seaman charged as a deserter. True, the laws of the United States may not make it the duty of a state judge to act; but it does not follow, that, if he is included in the law, his acts will be without authority. There are many powers conferred upon state magistrates by the laws of the United States, which, if executed, are valid. Whether such magistrate is bound to accept the authority and act upon it, is another question. The act of 1829, in determining the duty, confers the power on "any court, judge, justice, or other magistrate having competent power, to issue warrants" to arrest, &c. See Pars. Shipp. & Adm. 102; *Kentucky v. Dennison*, 24 How. [65 U. S.] 66, 107, 108. It is apparent, that the requisition was given to the master to be delivered to the justice at Staten Island, who, as the captain informed the consul, then detained

the seamen; and if, as stated by counsel (though it does not appear as printed in the copy proofs handed to me), it was addressed to "any magistrate," &c., the power of the magistrate is not clearly wanting.

But all these and other questions go to the merits. They bear on the broad question, whether, under the terms of the shipping articles, and the Prussian rules contained in the navigation book, &c., the seamen had a right to their wages. The effect of the stipulation not to sue in a foreign country, which appears to be one of those rules, also, and what amounts to a discharge from the contract, actual or constructive, are questions on the merits; and the sympathy, which the condition of these men, penniless in a foreign land, whether with or without fault on their part, must awaken in every mind susceptible of human emotion, strongly inclines to a condemnation of the conduct of the master in this matter.

But I am constrained to the conclusion, that the treaty required that this matter in difference should have been left where, I think, the treaty with Prussia leaves it—in the hands, and subject to the determination, of their own public officer. The necessary result is the dismissal of the libels.

[NOTE. An application was afterwards made to the supreme court for a mandamus to compel the circuit court to pass upon the merits, but it was denied.]

UNITED STATES v. DIEKELMAN ¹

1. Unless treaty stipulations provide otherwise, a merchant vessel of one country visiting the ports of another for the purpose of trade, is, so long as she remains, subject to the laws which govern them.
2. Where, in time of war, a foreign vessel, availing herself of a proclamation of the President of May 12, 1862, entered the port of New Orleans, the blockade of which was not removed, but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by such proclamation that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law.
3. As New Orleans was then governed by martial law, a subject of a foreign power entering that port with his vessel under the special license of the proclamation became entitled to the same rights and privileges accorded under the same circumstances to loyal citizens of the United States. Restrictions placed upon them operated equally upon him.

¹192 U. S. Reports, 520.

4. Money, silver-plate, and bullion, when destined for hostile use or for the purchase of hostile supplies, are contraband of war. In this case, the determination of the question whether such articles, part of the outward-bound cargo of the vessel, were contraband, devolved upon the commanding general at New Orleans. Believing them to be so, he, in discharge of his duty, ordered them to be removed from her, and her clearance to be withheld until his order should be complied with.
5. Where the detention of the vessel in port was caused by her resistance to the orders of the properly constituted authorities whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed,—*Held*, that her owner, a subject of Prussia, is not "entitled to any damages" against the United States, under the law of nations or the treaty with that power. 8 Stat. 384.

Appeal from the Court of Claims.

Mr. Assistant Attorney-General Edwin B. Smith for the appellant..

Mr. J. D. McPherson, *contra*.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This suit was brought in the Court of Claims under the authority of a joint resolution of both Houses of Congress, passed May 4, 1870, as follows:

That the claim of E. Diekelman, a subject of the King of Prussia, for damages for an alleged detention of the ship "Essex" by the military authorities of the United States at New Orleans, in the month of September, 1862, be and is hereby referred to the Court of Claims for its decision in accordance with law, and to award such damages as may be just in the premises, if he may be found to be entitled to any damages.

Before this resolution was passed, the matter of the claim had been the subject of diplomatic correspondence between the governments of the United States and Prussia.

The following article, originally adopted in the treaty of peace between the United States and Prussia, concluded July 11, 1799 (8 Stat. 168), and revived by the treaty concluded May 1, 1828 (8 Stat. 384), was in force when the acts complained of occurred, to wit:

Art. XIII. And in the same case, if one of the contracting parties, being engaged in war with any other power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandise of contraband, such as arms, ammunition and military stores of every kind, no such articles carried in the

vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband so as to induce confiscation or condemnation, and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding; paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not, in that case, be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

When the *Essex* visited New Orleans, the United States were engaged in the war of the rebellion. The port of that city was, at the very commencement of the war, placed under blockade, and closed against trade and commercial intercourse; but, on the 12th of May, 1862, the President, having become satisfied that the blockade might "be safely relaxed with advantage to the interests of commerce," issued his proclamation, to the effect that from and after June 1 "commercial intercourse, * * * except as to persons, things, and information contraband of war," might "be carried on subject to the laws of the United States, and to the limitations, and in pursuance of the regulations * * * prescribed by the Secretary of the Treasury," and appended to the proclamation. These regulations, so far as they are applicable to the present case, are as follows:

1. To vessels clearing from foreign ports and destined to * * * New Orleans, * * * licenses will be granted by consuls of the United States upon satisfactory evidence that the vessels so licensed will convey no persons, property, or information contraband of war either to or from the said ports; which licenses shall be exhibited to the collector of the port to which said vessels may be respectively bound, immediately on arrival, and, if required, to any officer in charge of the blockade: and on leaving either of said ports every vessel will be required to have a clearance from the collector of the customs according to law, showing no violation of the conditions of the license. 12 Stat. 1264.

The *Essex* sailed from Liverpool for New Orleans June 19, 1862, and arrived August 24. New Orleans was then in possession of the military forces of the United States, with General Butler in command. The city was practically in a state of siege by land, but open by sea, and was under martial law.

The commanding general was expressly enjoined by the Government of the United States to take measures that no supplies went out of the port which could afford aid to the rebellion; and, pursuant to this injunction, he issued orders in respect to the exportation of money, goods, or property, on account of any person known to be friendly to the Confederacy, and directed the custom-house officers to inform him whenever an attempt was made to send any thing out which might be the subject of investigation in that behalf.

In the early part of September, 1862, General Butler, being still in command, was informed that a large quantity of clothing had been bought in Belgium on account of the Confederate government, and was lying at Matanoras awaiting delivery, because that government had failed to get the means they expected from New Orleans to pay for it; and that another shipment, amounting to a half million more, was delayed in Belgium from coming forward, because of the non-payment of the first shipment. He was also informed that it was expected the first payment would go forward through the agency of some foreign consuls; and this information afterwards proved to be correct.

He was also informed early in September by the custom-house officers, that large quantities of silver-plate and bullion were being shipped on the *Essex*, then loading for a foreign port, by persons, one of whom had declared himself an enemy of the United States, and none of whom would enroll themselves as friends; and he thereupon gave directions that the specified articles should be detained, and their exportation not allowed until further orders.

On the 15th September, the loading of the vessel having been completed, the master applied to the collector of the port for his clearance, which was refused in consequence of the orders of General Butler, but without any reasons being assigned by the collector. The next day, he was informed, however, that his ship would not be cleared unless certain specified articles which she had on board were taken out and landed. Much correspondence ensued between General Butler and the Prussian consul at New Orleans in reference to

the clearance, in which it was distinctly stated by General Butler that the clearance would not be granted until the specified goods were landed, and that it would be granted as soon as this should be done. Almost daily interviews took place between the master of the vessel and the collector, in which the same statements were made by the collector. The master refused to land the cargo, except upon the return of his bills of lading. Some of these bills were returned, and the property surrendered to the shipper. In another case, the shipper gave an order upon the master for his goods, and they were taken away by force. At a very early stage in the proceeding, the master and the Prussian consul were informed that the objection to the shipment of the articles complained of was that they were contraband.

A part only of the goods having been taken out of the vessel, a clearance was granted her on the 6th of October, and she was permitted to leave the port and commence her voyage.

Upon this state of facts, the Court of Claims gave judgment for Diekelman, from which the United States took an appeal.

One nation treats with the citizens of another only through their government. A sovereign cannot be sued in his own courts without his consent. His own dignity, as well as the dignity of the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty, except in performance of his obligations, by treaty or otherwise, voluntarily assumed. Hence, a citizen of one nation wronged by the conduct of another nation, must seek redress through his own Government.

His sovereign must assume the responsibility of presenting his claim, or it need not be considered. If this responsibility is assumed, the claim may be prosecuted as one nation proceeds against another, not by suit in the courts as of right, but by diplomacy, or, if need be, by war. It rests with the sovereign against whom the demand is made to determine for himself what he will do in respect to it. He may pay or reject it; he may submit to arbitration, open his own courts to suit, or consent to be tried in the courts of another nation. All depends upon himself.

In this case, Diekelman, claiming to have been injured by the alleged wrongful conduct of the military forces of the United States, made his claim known to his Government. It was taken into consideration, and became the subject of diplomatic correspondence between the two nations. Subsequently, Congress, by joint resolution,

referred the matter to the Court of Claims "for its decision according to law." The courts of the United States were thus opened to Diekelman for this proceeding. In this way the United States have submitted to the Court of Claims, and through that court upon appeal to us, the determination of the question of their legal liability under all the circumstances of this case for the payment of damages to a citizen of Prussia upon a claim originally presented by his sovereign in his behalf. This requires us, as we think, to consider the rights of the claimant under the treaty between the two Governments, as well as under the general law of nations. For all the purposes of its decision, the case is to be treated as one in which the Government of Prussia is seeking to enforce the rights of one of its citizens against the United States in a suit at law, which the two Governments have agreed might be instituted for that purpose. We shall proceed upon that hypothesis.

1. As to the general law of nations.

The merchant vessels of one country visiting the ports of another for the purposes of trade subject themselves to the laws which govern the port they visit, so long as they remain; and this as well in war as in peace, unless it is otherwise provided by treaty. *The Exchange v. McFaddon*, 7 Cranch, 116. When the *Essex* sailed from Liverpool, the United States were engaged in war. The proclamation under which she was permitted to visit New Orleans made it a condition of her entry that she should not take out goods contraband of war, and that she should not leave until cleared by the collector of customs according to law. Previous to June 1, she was excluded altogether from the port by the blockade. At that date the blockade was not removed, but relaxed only in the interests of commerce. The war still remained paramount, and commercial intercourse subordinate only. When the *Essex* availed herself of the proclamation and entered the port, she assented to the conditions imposed, and can not complain if she was detained on account of the necessity of enforcing her obligations thus assumed.

The law by which the city and port were governed was martial law. This ought to have been expected by Diekelman when he despatched his vessel from Liverpool. The place had been wrested from the possession of the enemy only a few days before the issue of the proclamation, after a long and desperate struggle. It was, in fact, a

garrisoned city, held as an outpost of the Union army, and closely besieged by land. So long as it remained in the possession of the insurgents, it was to them an important blockade-running point, and after its capture the inhabitants were largely in sympathy with the rebellion. The situation was, therefore, one requiring the most active vigilance on the part of the general in command. He was especially required to see that the relaxation of the blockade was not taken advantage of by the hostile inhabitants to promote the interests of the enemy. All this was matter of public notoriety; and Dieckelman ought to have known, if he did not in fact know, that although the United States had to some extent opened the port in the interests of commerce, they kept it closed to the extent that was necessary for the vigorous prosecution of the war. When he entered the port, therefore, with his vessel, under the special license of the proclamation, he became entitled to all the rights and privileges that would have been accorded to a loyal citizen of the United States under the same circumstances, but no more. Such restrictions as were placed upon citizens, operated equally upon him. Citizens were governed by martial law. It was his duty to submit to the same authority.

Martial law is the law of military necessity in the actual presence of war. It is administered by the general of the army, and is in fact his will. Of necessity it is arbitrary; but it must be obeyed. New Orleans was at this time the theatre of the most active and important military operations. The civil authority was overthrown. General Butler, in command, was the military ruler. His will was law, and necessarily so. His first great duty was to maintain on land the blockade which had theretofore been kept up by sea. The partial opening of the port toward the sea, made it all the more important that he should bind close the military lines on the shore which he held.

To this law and this Government the *Essex* subjected herself when she came into port. She went there for gain, and voluntarily assumed all the chances of the war into whose presence she came. By availing herself of the privileges granted by the proclamation, she, in effect, covenanted not to take out of the port "persons, things, or information contraband of war." What is contraband depends upon circumstances. Money and bullion do not necessarily partake of that character; but, when destined for hostile use or to procure hostile supplies, they do. Whether they are so or not, under the circum-

stances of a particular case, must be determined by some one when a necessity for action occurs. At New Orleans, when this transaction took place, this duty fell upon the general in command. Military commanders must act to a great extent upon appearances. As a rule, they have but little time to take and consider testimony before deciding. Vigilance is the law of their duty. The success of their operations depends to a great extent upon their watchfulness.

General Butler found on board this vessel articles which he had reasonable cause to believe, and did believe, were contraband, because intended for use to promote the rebellion. It was his duty, therefore, under his express instructions, to see that the vessel was not cleared with these articles on board; and he gave orders accordingly. It matters not now whether the property suspected was in fact contraband or not. It is sufficient for us that he had reason to believe, and in fact did believe, it to be contraband. No attempt has been made to show that he was not acting in good faith. On the contrary, it is apparent, from the finding of the court below, that the existing facts brought to his knowledge were such as to require his prompt and vigorous action in the presence of the imminent danger with which he was surrounded. Certainly, enough is shown to make it necessary for this plaintiff to prove the innocent character of the property before he can call upon the United States to respond to him in damages for the conduct of their military commander, upon whose vigilance they relied for safety.

Believing, then, as General Butler did, that the property was contraband, it was his duty to order it out of the ship, and to withhold her clearance until his order was complied with. He was under no obligation to return the bills of lading. The vessel was bound not to take out any contraband cargo. She took all the risks of this obligation when she assumed it, and should have protected herself in her contracts with shippers against the contingency of being required to unload after the goods were on board. If she failed in this, the consequences are upon her, and not the United States. She was operating in the face of war, the chances of which might involve her and her cargo in new complications. She voluntarily assumed the risks of her hazardous enterprise, and must sustain the losses that follow.

Neither does it affect the case adversely to the United States that the property had gone on board without objection from the custom-house officers or the military authorities. It is not shown that its

character was known to General Butler or the officers of the custom-house before it was loaded. The engagement of the vessel was not to leave until she had been cleared according to law, and that her clearance might be withheld until with reasonable diligence it could be ascertained that she had no contraband property on board. This is the legitimate effect of the provisions of the treasury regulations, entitling her to a license "upon satisfactory evidence" that she would "convey no persons, property, or information contraband of war, either to or from" the port; and requiring her not to leave until she had "a clearance from the collector of customs, according to law, showing no violation of the license." Her entry into the port was granted as a favor, not as a right, except upon the condition of assent to the terms imposed. If the collector of customs was to certify that the license she held had not been violated, it was his duty to inquire as to the facts before he made the certificate. Every opportunity for the prosecution of this inquiry must be given. Under the circumstances, the closest scrutiny was necessary. If, upon the examination preliminary to the clearance, prohibited articles were found on board, there could be no certificate such as was required, until their removal. It would then be for the vessel to determine whether she would remove the goods and take the clearance, or hold the goods and wait for some relaxation of the rules which detained her in port as long as she had them on board. General Butler only insisted upon her remaining until she removed the property. She elected to remain. There was no time when her clearance would not have been granted if the suspected articles were unloaded.

We are clearly of the opinion that there is no liability to this plaintiff resting upon the United States under the general law of nations.

2. As to the treaty.

The vessel was in port when the detention occurred. She had not broken ground, and had not commenced her voyage. She came into the waters of the United States while an impending war was flagrant, under an agreement not to depart with contraband goods on board. The question is not whether she could have been stopped and detained after her voyage had been actually commenced, without compensation for the loss, but whether she could be kept from entering upon the voyage and detained by the United States within their own waters, held by force against a powerful rebellion, until she had complied

with regulations adopted as a means of safety, and to the enforcement of which she had assented, in order to get there. In our opinion, no provision of the treaties in force between the two Governments interferes with the right of the United States, under the general law of nations, to withhold a custom-house clearance as a means of enforcing port regulations.

Art. XIII of the treaty of 1828 contemplates the establishment of blockades, and makes special provision for the government of the respective parties in case they exist. The vessels of one nation are bound to respect the blockades of the other. Clearly the United States had the right to exclude Prussian vessels in common with those of all other nations, from their ports altogether, by establishing and maintaining a blockade while subduing a domestic insurrection. The right to exclude altogether necessarily carries with it the right of admitting through an existing blockade upon conditions, and of enforcing in an appropriate manner the performance of the conditions after admission has been obtained. It will not be contended that a condition which prohibits the taking out of contraband goods is unreasonable, or that its performance may not be enforced by refusing a clearance until it has been complied with. Neither, in the absence of treaty stipulations to the contrary, can it be considered unreasonable to require goods to be unloaded, if their contraband character is discovered after they have gone on board. In the existing treaties between the two Governments there is no such stipulations to the contrary. In the treaty of 1799, Art. VI is as follows: "That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed or detained, it is agreed that all examinations of goods required by the laws shall be made before they are laden on board the vessel, and that there shall be no examination after." While other articles in the treaty of 1799 were revived and kept in force by that of 1828, this was not. The conclusion is irresistible, that the high contracting parties were unwilling to continue bound by such a stipulation, and, therefore, omitted it from their new arrangement. It would seem to follow, that, under the existing treaty, the power of search and detention for improper practices continued, in time of peace even, until the clearance had been actually perfected and the vessel had entered on her voyage. If this be the rule in peace, how much more important is it in war for the prevention of the use of friendly vessels to aid the enemy.

Art. XIII of the treaty of 1799, revived by that of 1828, evidently has reference to captures and detentions after a voyage has commenced, and not to detentions in port, to enforce port regulations. The vessel must be "stopped" in her voyage, not detained in port alone. There must be "captors;" and the vessel must be in a condition to be "carried into port" or detained from "proceeding" after she has been "stopped," before this article can become operative. Under its provisions the vessel "stopped" might "deliver out the goods supposed to be contraband of war," and avoid further "detention." In this case there was no detention upon a voyage, but a refusal to grant a clearance from the port that the voyage might be commenced. The vessel was required to "deliver out the goods supposed to be contraband" before she could move out of the port. Her detention was not under the authority of the treaty, but in consequence of her resistance of the orders of the properly constituted port authorities, whom she was bound to obey. She preferred detention in port to a clearance on the conditions imposed. Clearly her case is not within the treaty. The United States, in detaining, used the right they had under the law of nations and their contract with the vessel, not one which, to use the language of the majority of the Court of Claims, they held under the treaty "by purchase" at a stipulated price.

As we view the case, the claimant is not "entitled to any damages" as against the United States, either under the treaty with Prussia or by the general law of nations.

The judgment of the Court of Claims is, therefore, reversed, and the cause remanded with directions to dismiss the petition.

NORTH GERMAN LLOYD S. S. CO. v. HEDDEN, COLLECTOR¹

[Same v. Magone, Collector]

(Circuit Court, D. New Jersey. May 21, 1890)

1. *Customs Duties—Construction of Laws—Tonnage Tax.*

Act Cong. June 26, 1884, sec. 14, which levies a duty of 3 cents per ton on all vessels "from any foreign port or place in North America, Central

¹43 Fed. Rep. 17.

America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Sandwich Islands, or Newfoundland," and a duty of 6 cents per ton on vessels from other foreign ports, does not entitle German vessels sailing from European ports to enter our ports on payment of a duty of 3 cents per ton, under the treaties of December 20, 1827, and May 1, 1828, which stipulate that the United States shall not grant any particular favor regarding commerce or navigation to any other foreign nation which shall not immediately become common to Germany, since the discrimination contained in said act is merely geographical, and the 3-cent rate applies to vessels of all nations coming from the privileged ports.

2. *Treaties—Effect of Inconsistent Act of Congress.*

Where an Act of Congress is in conflict with a prior treaty the Act must control, since it is of equal force with the treaty and of later date.

3. *Constitutional Law—Commissioner of Navigation.*

Act Cong. July 5, 1884, sec. 3, which makes final the decision of the commissioner of navigation on all questions "relating to the collection of tonnage tax, and to the refunding of such tax, when collected erroneously or illegally," is constitutional.

At Law.

Samuel F. Bigelow and *Henry C. Nevitt*, for plaintiff.

Howard W. Hayes, Asst. U. S. Dist. Atty., for defendants.

WALES, J. The plaintiff, a duly organized corporation under the laws of the Hanseatic Republic of Bremen, which is a part of the German empire, is the owner of a line of ocean steamships, plying regularly between the ports of Bremen and New York, and brings these actions, under section 2931, Rev. Stats. U. S., to recover the amount of certain tonnage dues, alleged to have been unlawfully collected from said ships during the period extending from June 26, 1884, to July 28, 1888, and while the defendants were successively collectors of customs at the last named port. The vessels cleared from Bremen for New York via Southampton, England, stopping at or near the latter place temporarily, to discharge cargo and passengers, and to take on board additional cargo, passengers, and mails. The consignees of the vessels paid the dues, in every instance, under protest, and the plaintiff appealed to the Secretary of the Treasury, and finally, at the suggestion of the latter officer and with the concurrence of the department of justice, brought these actions to determine the authority of the defendants. The right of the plaintiff to recover depends upon the following statement of the law and facts: Prior to

the Act of Congress of June 26, 1884, entitled "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade," tonnage tax was imposed upon German and all other vessels arriving in the United States from foreign ports, at the rate of 30 cents per ton per annum, and up to July 1st, of that year, it had been collected in a lump sum for a year at a time. But section 14 of the Act of 1884 changed the rate and mode of collection as follows:

That in lieu of the tax on tonnage of thirty cents per ton per annum heretofore imposed by law, a duty of three cents per ton, not to exceed in the aggregate fifteen cents per ton in any one year, is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Sandwich Islands, or Newfoundland; and a duty of six cents per ton, not to exceed thirty cents per ton annum, is hereby imposed at each entry upon all vessels which shall be entered in the United States from any other foreign ports. 23 U. S. Stats. 57.

This section was amended by section 11 of the Act of Congress of June 19, 1886, entitled "An Act to abolish certain fees," etc. 24 U. S. Stats. 81. The amendment consisted in adding the following words to those just quoted:

Not, however, to include vessels in distress or not engaged in trade; provided, that the President of the United States shall suspend the collection of so much of the duty herein imposed on vessels entered from any foreign port as may be in excess of the tonnage and lighthouse dues, or other equivalent tax or taxes, imposed in said port on American vessels, by the Government of the foreign country in which such port is situated, and shall, upon the passage of this Act, and from time to time thereafter as often as it may become necessary, by reason of changes in the laws of the foreign countries above mentioned, indicate by proclamation the ports to which such suspension shall apply, and the rate or rates of tonnage duty, if any, to be collected under such suspension; provided further, that such proclamation shall exclude from the benefits of the suspension herein authorized, the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes, are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels; and sections 4223

and 4224 and so much of section 4219 of the Revised Statutes as conflict with this section are hereby repealed.

Section 4219, title 48, chap. 3, Rev. Stats., referred to in the foregoing sub-proviso, provides that "nothing in this section shall be deemed * * * to impair any rights * * * under the law and treaties of the United States relative to the duty of tonnage vessels." Section 4227 of the same title and chapter is in these words:

Nothing contained in this title shall be deemed in any wise to impair any rights and privileges which have been or may be acquired by any foreign nation under the laws and treaties of the United States, relative to the duty on tonnage of vessels, or any other duty on vessels.

By article 9 of the treaty of December 20, 1827, between the United States and the Hanseatic Republics, "the contracting parties * * * engage mutually not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party." Public Treaties, 400. Article 9 of the Prussian-American treaty of May 1, 1828, (Public Treaties, 656,) contains a like stipulation. These treaties have been held by both the American and German Governments to be valid for all Germany. On the 26th of January, 1888, the President, in virtue of the authority vested in him by section 11 of the Act of June 19, 1886, issued his proclamation, wherein, after reciting that he had received satisfactory proof that no tonnage or lighthouse dues, or any equivalent tax or taxes whatever, are imposed upon American vessels entering the ports of the German Empire, either by the imperial Government or by the Government of the German maritime states, and that vessels belonging to the United States are not required, in German ports, to pay any fee or due of any kind or nature, or any import duty higher or other than is payable by German vessels or their cargoes, did "declare and proclaim that from and after the date of this my proclamation shall be suspended the collection of the whole of the duty of six cents per ton * * * upon vessels entered in the ports of the United States from any of the ports of the empire of Germany. * * * and the suspension hereby declared and proclaimed shall continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes shall be continued in the said ports of the empire of Germany, and no longer." The com-

missioner of navigation, in his circular letter No. 19, dated February 1, 1888, and approved by the Secretary of the Treasury, addressed to the collectors of customs and others, decided that the President's proclamation does not apply to vessels which entered before the date of the proclamation, and that only those German vessels "arriving directly from the ports of the German empire may be admitted under the proclamation without the payment of the dues therein mentioned." The commissioner of navigation claims authority to make this decision by virtue of section 3 of the Act of Congress of July 5, 1884, entitled "An Act to constitute a bureau of navigation in the Treasury Department," which reads as follows:

That the commissioner of navigation shall be charged with the supervision of the laws relating to the admeasurement of vessels, and the assigning of signal letters thereto, and of designating their official number; and on all questions of interpretation, growing out of the execution of the laws relating to these subjects, and relating to the collection of tonnage tax, and to the refunding of such tax when collected erroneously or illegally, his decision shall be final.

The plaintiff's vessels were German vessels, and on the 19th day of June, 1886, and thereafter until now, the Government of Germany exacted no tonnage tax or taxes whatever on vessels of the United States arriving in German ports.

Upon this statement of the law and the facts, the plaintiff's counsel contend (1) that as to the dues collected between June 26, 1884, and June 19, 1886, the plaintiff's vessels should not have been charged more than the lower rate of tonnage tax fixed by the Act of 1884, under the favored nation clause of the treaties, whereas the defendants charged six cents per ton; (2) that the dues collected after the passage of the Act of June 19, 1886, and prior to the President's proclamation, were excessive, for the same reason; (3) that no tonnage tax whatever could be lawfully collected of the vessels of the plaintiff, after the passage of the Act of June 19, 1886, because that Act went into effect immediately, and without waiting for the President's proclamation; (4) that the act of July 5, 1884, in so far as it confers on the commissioner of navigation the power of deciding finally on all questions of interpretation, growing out of the execution of the laws relating to the collection of tonnage tax, and the refund of the

same when illegally or erroneously collected, is unconstitutional and void.

As introductory to their argument, plaintiff's counsel referred to the policy of our Government in relation to the subject of navigation, which it is claimed has been from the beginning to establish entire reciprocity with other nations. The practice has been to ask for no exclusive privileges and to grant none, "but to offer to all nations and to ask from them entire reciprocity in navigation." 1 Kent, Comm. 34, note. This policy has been judicially recognized by the Supreme Court in *Oldfield v. Marriott*, 10 How. 146; and it is asserted that Congress had it in view in enacting the Acts of 1884 and 1886, imposing the tonnage taxes. The review presented by counsel of the legislative and diplomatic correspondence touching this subject is historically interesting and instructive, and would be persuasive in the case of a doubtful meaning of an Act of Congress, but it cannot be held to affect the interpretation of laws which are plain and unambiguous in their terms. The questions before the court must be determined by the ordinary and well-settled rules applicable to the construction of and validity of statutes.

Soon after the passage of the Act of June 26, 1884, claims were presented by the Government of Germany, and of other foreign powers, having similar treaty stipulations with the United States, in relation to navigation for the benefit of the three-cent rate of tax, under the favored nation clause. The claims having been referred to the Department of Justice, the attorney general, on the 19th of September, 1886, gave the following opinion:

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act, and entered in our ports, is, I think, purely geographical in character, inuring to the advantage of any vessel of any power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the Act. I see no warrant, therefore, to claim that there is anything in the most "favored nation clause" of the treaty between this country and the powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitations of the act.

The construction thus given to the statute is clearly consistent with its terms, which grant the privilege of the minimum tax to all vessels entered in United States from certain specified foreign ports, and not

exclusively to the vessels of nations to whom those ports belong, or in whose territories the ports are situate, excepting the vessels of those governments only which, in the imposition of tonnage taxes, discriminate against American vessels. In accordance with this construction, it follows that no particular favor is conferred on any nation, and that, with the exception noted, the vessels of all nations coming from the privileged ports are entered in the United States on an equal footing. Further discussion on this point would seem, therefore, to be fruitless; but it may be proper to observe that the construction of both the act of June 26, 1884, and that of June 19, 1886, and the complicated questions growing out of the claims of foreign governments, for the lower rate of tonnage tax by virtue of their treaty rights, were brought to the attention of congress by the President's message of January 14, 1889, transmitting a report of the Secretary of State in reference to the international questions arising from the imposition of differential tonnage dues upon vessels entering the United States from foreign countries. Ex. Doc-House Rep., 50th Cong., 3d Sess. The report, after mentioning the claims of the German minister for a reduction of the tax under the Act of 1884, and for a proper refund of the dues charged on German ships entering the United States from German ports since the date of the act of 1886, stated: "To this suggestion the undersigned was unable to respond, the matter being one for the consideration of Congress. But the request assuredly deserves equitable consideration." In respect to the claim now made by the plaintiff, that the course of its ships coming from Bremen to New York by the way of Southampton is not such as to deprive the run of its character of a voyage from a German port to a port in the United States, within the meaning of the Act of 1886, the report says:

But it has been held by the commissioner of navigation that the voyage can not be so regarded, and that the vessels must pay dues as coming from Southampton, a British port. Similar rulings have been made in respect to other vessels of different nationality.

And the report further adds:

Another instance of complication is that of a vessel starting from, we will say, a 6-30 cent port, and calling on her way to

the United States at a 3-15 cent port, and a free port. Other combinations will readily suggest themselves, and the need not be stated. But in each case the vessel is required to pay the highest rate, without reference to the amount of cargo obtained at the various ports from which she comes. Thus a penalty may practically be imposed in many cases on indirect voyages. It is conceived that in many instances the main purpose of the Act may be defeated by these rulings, but it must be admitted that the law contains no provision to meet such cases. * * * This appears to be a proper subject for the consideration of Congress.

From an examination of the above extracts from his report, it will be seen that the Secretary of State was of the opinion that the questions referred to were to be addressed to the political, and not to the judicial, branch of the government, and that Congress alone could be looked to for the redress of the class of wrongs complained of by the plaintiff, and to prevent their repetition. The plaintiff's counsel deny the correctness of the construction given to the act of 1884 by the attorney general, and insist that the difference in tonnage rates, by which certain ports specially named in the act are favored, is a particular favor to the countries to which those ports belong, "in respect to their commerce and navigation" which *ipso facto* accrues, in pursuance of treaty right, to German vessels coming from German ports. It is also asserted that the treaty stipulations with Germany are paramount to the later Acts of Congress, and that the former can not be annihilated by the latter. Admitting for the moment that the attorney general may have misconstrued the Act, still it cannot be questioned that, excepting where rights have become vested under a treaty, to use the expression of Judge SWAYNE, in the *Cherokee Tobacco Case*, 11 Wall. 616, "a treaty may supersede a prior Act of Congress and an Act of Congress may supersede a prior treaty." The commissioner of navigation held that the Acts of 1884 and 1886 were inconsistent with the treaties, and being of a later date must prevail, and in so ruling he is not without authority of adjudged cases. In *Foster v. Neilson*, 2 Pet. 314, Chief Justice MARSHALL, in delivering the opinion of the court, said:

Our constitution declares a treaty to be a law of the land. It is consequently to be regarded in the courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the

terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial, department and the legislature must execute the contract before it can become a rule for the court.

The same doctrine is held in *Taylor v. Morton*, 2 Curt. 454; *Ropes v. Clinch*, 8 Blatchf. 304. In the *Cherokee Tobacco Case*, *supra*, there was an open conflict between a treaty contract and a subsequent law, and the question was as to which should prevail. The 107th section of the Internal Revenue Act of July 20, 1868, provided "that the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not." The tenth article of the treaty of 1866 between the United States and the Cherokee Nation of Indians stipulated as follows:

Every Cherokee Indian and freed person residing in the Cherokee Nation shall have the right to sell any products of his farm, including his or her livestock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying the tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

The collection officers had seized a quantity of tobacco belonging to the claimants which was found in the Cherokee Nation, outside of any collection District of the United States, and exemption from duty was claimed by virtue of the treaty. It was admitted that the repugnancy between the treaty and the statute was clear, and that they could not stand together; that one or the other must yield. The court decided that the language of the section was as clear and explicit as could be employed. It embraced indisputably the Indian Territory, and congress not having thought proper to exclude them, it was not for the court to make the exception; and that the consequences arising from the repeal of the treaty were matters for legislative and not judicial action, and if a wrong had been done, the power of redress was with congress and not with the judiciary. In *Taylor v. Morton*, the facts were these: Article 6 of the treaty of

1832, with Russia, stipulated that "no higher or other duties shall be imposed upon the importations into the United States of any article the produce or manufacture of Russia, than are or shall be payable on the like article being the produce or manufacture of any other foreign country." This was held by the court to be merely an agreement, to be carried into effect by Congress, and not to be enforced by the court, and that an Act of Congress laying a duty of \$25 a ton, on hemp from India, and \$40 a ton, on hemp from other countries, did not authorize the courts to decide that Russian hemp should be admitted at the lower rate. Such a promise, it was said, addresses itself to the political and not to the judicial department of the Government, and the courts can not try the question whether it has been observed or not. The court expressly declined to give any opinion on the merits of the case, holding that the questions, whether treaty obligations have been kept or not, and whether treaty promises shall be withdrawn or performed, are matters that belong to diplomacy and legislation, and not to the administration of the laws. If Congress has departed from the treaty, it is immaterial to inquire whether the departure was accidental or designed, and if the latter whether the reasons therefor were good or bad. If, by the act in question, they have not departed from the treaty, the plaintiff has no case. If they have, their act is the municipal law of the country, and any complaint, either by the citizen or the foreigner, must be made to those who alone are empowered by the constitution to judge of its grounds and act as may be suitable and just.

As to the time when the Act of June 19, 1886, went into operation, whether immediately from and after the date of its approval, or not until the date of the President's proclamation, and also whether the voyages of the plaintiff's vessels from Bremen to New York must be made "directly," and without stoppage at an intermediate port, in order to be exempted from the imposition and payment of tonnage dues, the decision of these questions by the commissioner of navigation must be held to be conclusive, unless so much of section 3 of the act of July 5, 1884, which makes his decision final in such matters, is unconstitutional. Much learning and ability have been employed by plaintiff's counsel to establish the invalidity of this portion of the act, which invests a department officer with such unlimited judicial power, and by which he is enabled to decide all contests in relation to alleged illegal dues, *ex parte*, and absolutely. On the other hand, the

labor and responsibility of the court have been increased by the omission of the defendant's counsel to furnish any assistance towards the solution of the questions, and permitting them to pass *sub silentio*. The subject, however, is not *res integra*. In *Cary v. Curtis*, 3 How. 236, the supreme court had under consideration the constitutionality of the third section of the act of congress of March 3, 1839, entitled "An Act making appropriations for the civil and diplomatic expenses of the Government for the year 1839," by which the Secretary of the Treasury was authorized to finally decide when more duties had been paid to any collector of customs, or to any person acting as such, than the law required, and to draw his warrant in favor of the person or persons entitled for a refund of the amounts so overpaid. The opinion of the court discusses very ably and at much length the questions involved in that case. A few sentences taken from the opinion will indicate the grounds upon which the validity of the Act of 1839 was sustained:

We have no doubt [say the court] of the objects or the import of that act. We can not doubt that it constitutes the Secretary of the Treasury the source whence instructions are to flow; that it controls both the position and the conduct of the collectors of the revenue; that it has denied to them any right or authority to retain any portion of the revenue for purposes of contestation or indemnity; has ordered and declared those collectors to be the mere organs of receipt and transfer, and has made the head of the treasury department the tribunal for the examination of claims for duties said to have been improperly paid. * * * It is contended, however, that the language and the purposes of Congress, if really what we hold them to be declared in the statute of 1839, can not be sustained, because they would be repugnant to the constitution, inasmuch as they would debar the citizen of his right to resort to the courts of justice. * * * The objection above referred to admits of the most satisfactory refutation. This may be found in the following positions, familiar in this and in most other governments, viz., that the Government, as a general rule, claims an exemption from being sued in its own courts. That although, as being charged with the administration of the laws, it will resort to those courts as means of securing this great end, it will not permit itself to be impleaded therein, save in instances forming conceded and express exceptions. Secondly, in the doctrine, so often ruled in this court, that the judicial power of the United States, although it has its origin in the constitution, is (except in enumerated instances, ap-

plicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to congress may seem proper for the public good. To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the former powers limited by its own discretion merely. It follows, then, that the courts created by statute must look to the statute as the warrant for their authority. * * * The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law. * * * The courts of the United States can take cognizance only of subjects assigned to them expressly or by necessary implication; *a fortiori*, they can take no cognizance of matters that by law are either denied to them, or expressly referred *ad aliud examen*.

This exposition of the origin and extent of the jurisdiction of the courts of the United States was reaffirmed in *Sheldon v. Sill*, 8 How. 449, where it was held that courts created by statute can have no jurisdiction but such as the statute confers. The right given by section 2931, Rev. Stat., to sue for overpaid dues is taken away by the Act of July 5, 1884, and the power to determine controversies arising from alleged exactions by collectors is deposited with the commissioner of navigation. Such is the effect of the decisions just cited, and which, as long as they are not overruled by the tribunal which made them, must be obeyed as the law of the land. The authorities referred to by plaintiff's counsel are cases where department officers, in making regulations to be observed by their subordinates, exceeded their statutory power, but in no one instance was it pretended that the officer was clothed with the power to make a final decision in contested matters. It was perhaps unnecessary, in view of *Cary v. Curtis*, and *Sheldon v. Sill*, that I should have done more than acquiesce in the doctrines there announced, and support the validity of the act of July 5, 1884, without further discussion, but the large amount of money involved in the present actions, and the earnestness and force with which the plaintiff's claims have been pressed, have induced me to make a more extended presentation of them than was at first designed. It must be borne in mind that this court is

not called on to express any opinion on the justice or expediency of placing such unlimited power in the hands of the commissioner of navigation as is conferred by the act of July 5, 1884. The duty of the court is to discover whether the act is in conflict with the constitution, and, on being satisfied that it is not, to judge accordingly. To pursue any other course would be not only extrajudicial, but also improper, in assuming to criticise the wisdom of Congress in making the law. Neither is the court required to say whether the commissioner of navigation is or is not correct in his interpretation of the law. Congress has seen fit to constitute him the final arbiter in certain disputes, and congress alone can supply a remedy for any wrong which may have arisen from his construction of the law relating to the collection of tonnage due. Let judgment be entered in each case for the defendant.

DISCONTO GESELLSCHAFT v. UMBREIT¹

ERROR TO THE CIRCUIT COURT OF MILWAUKEE COUNTY (BRANCH
No. 1)

STATE OF WISCONSIN

No. 63. Argued December 10, 11, 1907. Decided February 24, 1908.

It is too late to raise the Federal question on motion for rehearing in the state court, unless that court entertains the motion and expressly passes on the Federal question.

While aliens are ordinarily permitted to resort to our courts for redress of wrongs and protection of rights, the removal of property to another jurisdiction for adjustment of claims against it is a matter of comity and not of absolute right, and, in the absence of treaty stipulations, it is within the power of a State to determine its policy in regard thereto.

The refusal by a State to exercise comity in such manner as would impair the rights of local creditors by removing a fund to a foreign jurisdiction for administration does not deprive a foreign creditor of his property without due process of law or deny to him the equal protection of the law; and so held as to a judgment of the highest court of Wisconsin holding the attachment of a citizen of that State superior to an earlier attachment of a foreign creditor.

¹208 U. S. 570.

While the treaty of 1828 with Prussia has been recognized as being still in force by both the United States and the German Empire, there is nothing therein undertaking to change the rule of national comity that permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of its jurisdiction for administration in favor of creditors beyond its borders.

127 Wisconsin, 676, affirmed.

The facts are stated in the opinion.

Mr. F. C. Winkler for plaintiff in error:

The Federal questions on both points were brought before the Supreme Court of the State and claim made under them in the argument for rehearing. The motion was denied and opinion rendered expressly overruling the claim based on the treaties and by necessary implication, also the claim based on the Constitution of the United States.

The rulings upon them are therefore subject to review. *McKay v. Kalyton*, 204 U. S. 458; *Leigh v. Green*, 193 U. S. 79; *Columbia Water Power Co. v. Columbia Street Railway Co.*, 172 U. S. 465.

The plaintiff's suit was brought under the statutes of Wisconsin. The defendant was in Wisconsin. The property attached had been brought by him and placed on deposit in the State of Wisconsin. No court in the world could exercise jurisdiction either over his person or over his property except the courts of Wisconsin. No statute debars an alien from seeking justice in Wisconsin courts where the protection of his rights requires it.

The plaintiff is denied the benefit of the proceedings and of its judgment because being a foreigner it has no rights in the State of Wisconsin except such as "comity," which is "good nature," will accord it. Even under the ruling of the state court that the right of the plaintiff to pursue its absconding debtor into this country and to invoke the latter's remedial processes against him rests upon the comity, it is, however, the comity of the sovereignty, not of the court. Wharton, Conflict of Laws, Sec. 1a.

Comity can not be given or withheld at will. Civilization demands its exercise where justice requires it. It can not be denied, in whole or in part, except on clear, clean principles of justice.

Under the treaty between the United States and the Kingdom of Prussia, made in 1828, if a proper and liberal interpretation be given thereto, the plaintiff in error is entitled to the same standing in court

as a citizen of the United States would be in a like case. Public Treaties (Govt. Printing Office, 1875), p. 656; *Tucker v. Alexandroff*, 183 U. S. 424, 437. The cases cited by the Supreme Court of Wisconsin, viz.: *Eingartner v. Illinois Steel Co.*, 94 Wisconsin, 70; *Gardner v. Thomas*, 14 Johnson, 134; *Johnson v. Dalton*, 1 Cowen, 543; *DeWitt v. Buchanan*, 54 Barb. 31; *Olsen v. Schierenberg*, 3 Daly, 100; *Burdick v. Freeman*, 120 N. Y. 421, can easily be distinguished from the case at bar.

The state court erred in stating that plaintiff sues as the agent of a foreign trustee in bankruptcy. That trustee has and claims no rights to the bankrupt's property in Wisconsin. Foreign law does not operate on property beyond its jurisdiction. *Segnitz v. G. C. Banking & Trust Co.*, 117 Wisconsin, 171, 176.

The property in question was not transferred to the trustee and that left its legal title in the debtor. The plaintiff being a creditor brought suit on his own claim in his own right.

The circumstance that the creditor after suit commenced promised to turn over the proceeds he should recover to the trustee for distribution does not impair his rights as a creditor.

The course of the plaintiff in no way "sets at naught" the rule of our law that the trustee in bankruptcy does not obtain title to property in Wisconsin by reason of the proceedings in Germany. No claim is made on this score in the intervenor's answer.

The decision of the Supreme Court of Wisconsin deprives the plaintiff of its property rights without due process of law, in violation of the Constitution of the United States.

The judgment which the intervenor obtained, although in the form of the statute, is in point of fact no better than an *ex parte* affidavit. The defendant was to the intervenor's knowledge a prisoner in Germany. The only notice given was by publication of the summons in a Milwaukee paper. No copy of the summons and complaint was ever mailed to the defendant as required by Sec. 2640, Statutes of Wisconsin.

The defendant Terlinden, when the intervenor's suit was commenced against him, had not the slightest interest in the property sought to be reached. All his interest had passed to the plaintiff. The plaintiff was the only party adversely interested to the intervenor. It had an adjudicated lien good against all the world (except the claim of the intervenor).

An alien, too, is entitled to due process of law under the Constitution of the United States. *In re Ah Fung*, 3 Sawyer, 144; *Ah Kow v. Nunan*, 5 Sawyer, 562; *In re Ah Chung*, 2 Fed. Rep. 733.

The judgment against Terlinden was, as against this plaintiff, absolutely without process of law. It adjudicated nothing. The plaintiff was not a party therein, nor was it notified, and it had no opportunity to defend against it.

Mr. Joseph B. Doe for defendant in error:

Domestic creditors will be protected to the extent of not allowing the property or funds of a non-resident debtor to be withdrawn from the State before domestic creditors have been paid. Every country will first protect its own citizens. *Catlin v. Silver Plate Co.*, 123 Indiana, 477; *Chafey v. Fourth Nat. Bank*, 71 Main, 414, 524; *Bagby v. Railway Co.*, 86 Pa. St. 291; *Lycoming Fire Ins. Co. v. Wright*, 55 Vermont, 526; *Thruston v. Rosenfelt*, 42 Missouri, 474; *Willitts v. Waite*, 25 N. Y. 577.

Citizens and residents of the country where insolvency proceedings have been instituted are bound by such proceedings and can not pursue the property of the insolvent debtor in another country. *Cole v. Cunningham*, 133 U. S. 107; *Linville v. Hadden*, 88 Maryland, 594; *Chafey v. Fourth Nat. Bank*, *supra*; *Einer v. Beste*, 32 Missouri, 240; *Long v. Girdwood*, 150 Pa. St. 413; *Bacon v. Horne*, 123 Pa. St. 452.

A creditor, by proving his claim in bankruptcy or any insolvency proceedings, submits to the jurisdiction of the court in which the proceeding is pending and can not pursue his remedy elsewhere. *Clay v. Smith*, 3 Peters, 411; *Cooke v. Coyle*, 113 Massachusetts, 252; *Ormsby v. Dearborn*, 116 Massachusetts, 386; *Batchelder v. Batchelder*, 77 N. H. 31; *Wilson v. Capuro*, 41 California, 545; *Wood v. Hazen*, 10 Hun. 362.

Where both parties, plaintiff and defendant, are residents of a foreign State, the plaintiff can not come into our country and obtain an advantage by our law which he could not obtain by his own.

If he seeks to nullify the law of his own State and asks our courts to aid him in so doing, he can not have such assistance, if for no other reason than that it is forbidden by public policy and the comity which exists between states and nations, which comity will always be enforced when it does not conflict with the rights of domestic citizens. *Bacon v. Horne*, *supra*; *In re Waite*, 99 N. Y. 433; *Bagby v. Railway Co.*, *supra*.

Citizens of a foreign State or country will not be aided by the courts of this country to obtain, by garnishment, a preference of their claims against a foreign debtor, in disregard of proceedings in their own country for the sequestration of the debtor's estate and the appointment of a trustee thereof in bankruptcy. *Long v. Girdwood, supra.*

It is the uniform rule and doctrine of all courts that the principles of comity do not require that courts confer powers upon a foreign receiver or trustee in bankruptcy or permit him to bring and maintain actions in this State that interfere with and impair the rights of domestic creditors. *Humphreys v. Hopkins*, 81 California, 551; *Ward v. Pac. Mutual Life Ins. Co.*, 135 California, 235; *Hunt v. Columbian Ins. Co.*, 55 Maine, 290; *Pierce v. O'Brien*, 129 Massachusetts, 314; *Rogers v. Riley*, 80 Fed. Rep. 759; *Catlin v. Wilcox Silver Plate Co.*, 123 Indiana, 477.

Mr. Justice Day delivered the opinion of the court.

The Disconto Gesellschaft, a banking corporation of Berlin, Germany, began an action in the Circuit Court of Milwaukee County, Wisconsin, on August 17, 1901, against Gerhard Terlinden and at the same time garnished the First National Bank of Milwaukee. The bank appeared and admitted an indebtedness to Terlinden of \$6,420. The defendant in error Umbreit intervened and filed an answer, and later an amended answer.

A reply was filed, taking issue upon certain allegations of the answer, and a trial was had in the Circuit Court of Milwaukee County, in which the court found the following facts:

That on the 17th day of August, 1901, the above-named plaintiff, the Disconto Gesellschaft, commenced an action in this court against the above-named defendant, Gerhard Terlinden, for the recovery of damages sustained by the tort of the said defendant, committed in the month of May, 1901; that said defendant appeared in said action by A. C. Umbreit, his attorney, on August 19, 1901, and answered the plaintiff's complaint; that thereafter such proceedings were had in said action that judgment was duly given on February 19, 1904, in favor of said plaintiff, Disconto Gesellschaft, and against said defendant, Terlinden, for \$94,145.11 damages and costs; that \$85,371.49, with interest from March 26, 1904, is now due and unpaid thereon; that at the time of the commencement of said action, to wit, on August 17, 1901, process in garnishment was served on the above-named garnishee,

First National Bank of Milwaukee, as garnishee of the defendant Terlinden.

That on August 9, 1901, and on August 14, 1901, a person giving his name as Theodore Grafe deposited in said First National Bank of Milwaukee the equivalent of German money aggregating \$6,420.00 to his credit upon account; that said sum has remained in said bank ever since, and at the date hereof with interest accrued thereon amounted to \$6,969.47.

That the defendant Gerhard Terlinden and said Theodore Grafe, mentioned in the finding, are identical and the same person.

That the interpleaded defendant, Augustus C. Umbreit, on March 21, 1904, commenced an action in this court against the defendant Terlinden for recovery for services rendered between August 16, 1901, and February 1, 1903; that no personal service of the summons therein was had on the said summons therein was served by publication only and without the mailing of a copy of the summons and of complaint to said defendant; that said defendant did not appear therein; that on June 11, 1904, judgment was given in said action by default in favor of said Augustus C. Umbreit and against said defendant Terlinden for \$7,500 damages, no part whereof has been paid; that at the time of the commencement of said action process of garnishment was served, to wit, on March 22, 1904, on the garnishee, First National Bank of Milwaukee, as garnishee of said defendant Terlinden.

That the defendant Terlinden at all the times set forth in finding number one was and still is a resident of Germany; that about July 11, 1901, he absconded from Germany and came to the State of Wisconsin and assumed the name of Theodore Grafe; that on August 16, 1901, he was apprehended as a fugitive from justice upon extradition proceedings duly instituted against him, and was thereupon extradited to Germany.

That the above-named plaintiff, the Disconto Gesellschaft, at all the times set forth in the findings was, ever since has been and still is a foreign corporation, to wit, of Germany, and during all said time had its principal place of business in Berlin, Germany; that the above-named defendant, Augustus C. Umbreit, during all said times was and still is a resident of the State of Wisconsin.

That on or about the 27th day of July, 1901, proceedings in bankruptcy were instituted in Germany against said defendant Terlinden, and Paul Hecking appointed trustee of his estate in such proceedings on said date; that thereafter, and on or after August 21, 1901, the above-named plaintiff, the Disconto Gesellschaft, was appointed a member of the committee of creditors of the defendant Terlinden's personal estate, and accepted such ap-

pointment; and that the above-named plaintiff, the Disconto Gesellschaft, presented its claim to said trustee in said bankruptcy proceedings; that said claim had not been allowed by said trustee in January, 1902, and there is no evidence that it has since been allowed; that nothing has been paid upon said claim; that said claim so presented and submitted is the same claim upon which action was brought by the plaintiff in this court and judgment given, as set forth in finding No. 1; that said action was instituted by said plaintiff, the Disconto Gesellschaft, through the German consul in Chicago; and that the steps so taken by the plaintiff, the Disconto Gesellschaft, had the consent and approval of Dr. Paul Hecking as trustee in Bankruptcy, so appointed in the bankruptcy proceedings in Germany, and that after the commencement of the same the plaintiff, the Disconto Gesellschaft, agreed with said trustee that the moneys it should recover in said action should form part of the said estate in bankruptcy and be handed over to said trustee; that, among other provisions, the German bankrupt act contained the following: "Sec. 14, Pending the bankruptcy proceedings, neither the assets nor any other property of the bankrupt are subject to attachment or execution in favor of individual creditors."

Upon the facts thus found the Circuit Court rendered a judgment giving priority to the levy of the Disconto Gesellschaft for the satisfaction of its judgment out of the fund attached in the hands of the bank. Umbreit then appealed to the Supreme Court of Wisconsin. That court reversed the judgment of the Circuit Court, and directed judgment in favor of Umbreit, that he recover the sum garnisheed in the bank. 127 Wisconsin, 651. Thereafter a remittitur was filed in the Circuit Court of Milwaukee County and a final judgment rendered in pursuance of the direction of the Supreme Court of Wisconsin. This writ of error is prosecuted to reverse that judgment. At the same time a decree in an equity suit, involving a fund in another bank, was reversed and remanded to the Circuit Court. This case had been heard, by consent, with the attachment suit. With it we are not concerned in this proceeding.

No allegation of Federal rights appeared in the case until the application for rehearing. In this application it was alleged that the effect of the proceedings in the state court was to deprive the plaintiff in error of its property without due process of law, contrary to the Fourteenth Amendment, and to deprive it of certain rights and privileges guaranteed to it by treaty between the Kingdom of Prussia and

the United States. The Supreme Court of Wisconsin, in passing upon the petition for rehearing and denying the same, dealt only with the alleged invasion of treaty rights, overruling the contention of the plaintiff in error. 127 Wisconsin, 676. It is well settled in this court that it is too late to raise Federal questions reviewable here by motions for rehearing in the state court. *Pim v. St. Louis*, 165 U. S. 273; *Fullerton v. Texas*, 196 U. S. 192; *McMillen v. Ferrum Mining Company*, 197 U. S. 343, 347; *French v. Taylor*, 199 U. S. 274, 278. An exception to this rule is found in cases where the Supreme Court of the State entertains the motion and expressly passes upon the Federal question. *Mallett v. North Carolina*, 181 U. S. 589; *Leigh v. Green*, 193 U. S. 79.

Conceding that this record sufficiently shows that the Supreme Court heard and passed upon the Federal questions made upon the motion for rehearing, we will proceed briefly to consider them.

The suit brought by the Disconto Gesellschaft in attachment had for its object to subject the fund in the bank in Milwaukee to the payment of its claim against Terlinden. The plaintiff was a German corporation and Terlinden was a German subject. Umbreit, the intervenor, was a citizen and resident of Wisconsin. The Supreme Court of Wisconsin adjudged that the fund attached could not be subjected to the payment of the indebtedness due the foreign corporation as against the claim asserted to the fund by one of its own citizens, although that claim arose after the attachment by the foreign creditor; and, further, that the fact that the effect of judgment in favor of the foreign corporation would be, under the facts found, to remove the fund to a foreign country, there to be administered in favor of foreign creditors, was against the public policy of Wisconsin, which forbade such discrimination as against a citizen of that State.

Alien citizens, by the policy and practice of the courts of this country, are ordinarily permitted to resort to the courts for the redress of wrongs and the protection of their rights. 4 Moore, International Law Digest, § 536, p. 7; Wharton on Conflict of Laws, § 17.

But what property may be removed from a State and subjected to the claims of creditors of other States, is a matter of comity between nations and states and not a matter of absolute right in favor of creditors of another sovereignty, when citizens of the local state or country are asserting rights against property within the local jurisdiction.

“‘Comity,’ in the legal sense,” says Mr. Justice Gray, speaking for this court in *Hilton v. Guyat*, 159 U. S. 113, 163, “is neither a matter of absolute obligation on the one hand nor of mere courtesy and good-will upon the other. But it is the recognition which one nation allows in its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.”

In the elaborate examination of the subject in that case many cases are cited and the writings of leading authors on the subject extensively quoted as to the nature, obligation and extent of comity between nations and states. The result of the discussion shows that how far foreign creditors will be protected and their rights enforced depends upon the circumstances of each case, and that all civilized nations have recognized and enforced the doctrine that international comity does not require the enforcement of judgment in such wise as to prejudice the rights of local creditors and the superior claims of such creditors to assert and enforce demands against property within the local jurisdiction. Such recognition is not inconsistent with that moral duty to respect the rights of foreign citizens which inheres in the law of nations. Speaking of the doctrine of comity, Mr. Justice Story says: “Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasion on which its exercises may be justly demanded.” Story on Conflict of Laws, § 33.

The doctrine of comity has been the subject of frequent discussion in the courts of this country when it has been sought to assert rights accruing under assignments for the benefit of creditors in other States as against the demands of local creditors, by attachment or otherwise in the State where the property is situated. The cases were reviewed by Mr. Justice Brown, delivering the opinion of the court in *Security Trust Company v. Dodd, Mead & Co.*, 173 U. S. 624, and the conclusion reached that voluntary assignments for the benefit of creditors should be given force in other States as to property therein situate, except so far as they come in conflict with the rights of local creditors, or with the public policy of the State in which it is sought to be enforced; and, as was said by Mr. Justice McLean in *Oakey v. Bennett*, 11 How. 33, 44, “national comity does not require any government to give effect to such assignment [for the benefit of creditors] when it shall impair the remedies or lessen the securities of its own citizens.”

There being, then, no provision of positive law requiring the recognition of the right of the plaintiff in error to appropriate property in the State of Wisconsin and subject it to distribution for the benefit of foreign creditors as against the demands of local creditors, how far the public policy of the State permitted such recognition was a matter for the State to determine for itself. In determining that the policy of Wisconsin would not permit the property to be thus appropriated to the benefit of alien creditors as against the demands of the citizens of the State, the Supreme Court of Wisconsin has done no more than has been frequently done by nations and states in refusing to exercise the doctrine of comity in such wise as to impair the right of local creditors to subject local property to their just claims. We fail to perceive how this application of a well known rule can be said to deprive the plaintiff in error of its property without due process of law.

Upon the motion for rehearing the plaintiff in error called attention to two alleged treaty provisions between the United States and the kingdom of Prussia, the first from the treaty of 1828, and the second from the treaty of 1799. As to the last mentioned treaty the following provision was referred to:

Each party shall endeavor by all the means in their power to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land.

The treaty of 1799 expired by its own terms on June 2, 1810, and the provision relied upon is not set forth in so much of the treaty as was revived by article 12 of the treaty of May 1, 1828. See *Compilation of Treaties in Force*, 1904, prepared under resolution of the Senate, pp. 638 *et seq.* If this provision of the treaty of 1799 were in force we are unable to see that it has any bearing upon the present case.

Article one of the treaty of 1828 between the kingdom of Prussia and the United States is as follows:

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective states shall mutually have liberty to enter the ports, places and rivers of the territories of each party

wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

This treaty is printed as one of the treaties in force in the compilation of 1904, p. 643, and has undoubtedly been recognized by the two governments as still in force since the formation of the German Empire. See *Terlinden v. Ames*, 184 U. S. 270; Foreign Relations of 1883, p. 369; Foreign Relations of 1885, pp. 404, 443, 444; Foreign Relations of 1887, p. 370; Foreign Relations of 1895, part one, 539.

Assuming, then, that this treaty is still in force between the United States and the German Empire, and conceding the rule that treaties should be liberally interpreted with a view to protecting the citizens of the respective countries in rights thereby secured, is there anything in this article which required any different decision in the Supreme Court of Wisconsin than that given? The inhabitants of the respective countries are to be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs, and they shall enjoy, to that effect, the same security and protection as the natives of the country wherein they reside, upon submission to the laws and ordinances there prevailing. It requires very great ingenuity to perceive anything in this treaty provision applicable to the present case. It is said to be found in the right of citizens of Prussia to attend to their affairs in this country. The treaty provides that for that purpose they are to have the same security and protection as natives in the country wherein they reside. Even between States of the American Union, as shown in the opinion of Mr. Justice Brown in *Security Trust Co. v. Dodd, Mead & Co.*, 173 U. S. *supra*, it has been the constant practice not to recognize assignments for the benefit of creditors outside the State, where the same came in conflict with the rights of domestic creditors seeking to recover their debts against local property. This is the doctrine in force as against natives of the country residing in other states, and it is this doctrine which has been applied by the Supreme Court of Wisconsin to foreign creditors residing in Germany. In short, there is nothing in this treaty undertaking to change the well-recognized rule between states and nations

which permits a country to first protect the rights of its own citizens in local property before permitting it to be taken out of the jurisdiction for administration in favor of those residing beyond their borders.

The judgment of the Circuit Court of Milwaukee County entered upon the remittitur from the Supreme Court of Wisconsin is

Affirmed.

CASE OF THE APPAM¹

Supreme Court of the United States

Nos. 650 and 722.—OCTOBER TERM, 1916

<p>Hans Berg, Prize Master in Charge of the Prize Ship <i>Appam</i>, and L. M. von Schilling, Vice-Consul of the German Empire, Appellants, 650 <i>vs.</i> British & African Steam Navigation Co. Same, 722 <i>vs.</i> Henry G. Harrison, Master of the Steam- ship <i>Appam</i>.</p>	}	<p>Appeals from the Dis- trict Court of the United States for the Eastern District of Virginia.</p>
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[March 6, 1917.]

Mr. Justice DAY delivered the opinion of the Court.

These are appeals from the District Court of the United States for the Eastern District of Virginia, in two admiralty cases. No. 650 was brought by the British & African Steam Navigation Company, Limited, owner of the British steamship, *Appam*, to recover possession of that vessel. No. 722 was a suit by the master of the *Appam* to recover possession of the cargo. In each of the cases the decree was in favor of the libellant.

The facts are not in dispute and from them it appears: That during the existence of the present war between Great Britain and Germany, on the 15th day of January, 1916, the steamship *Appam* was captured

¹Print of the Reporter of the Supreme Court of the United States.

on the high seas by the German cruiser *Moewe*. The *Appam* was a ship under the British flag, registered as an English vessel, and is a modern cargo and passenger steamship of 7,800 tons burden. At the time of her capture she was returning from the West Coast of Africa to Liverpool, carrying a general cargo of cocoa beans, palm oil, kernels, tin, maize, sixteen boxes of specie, and some other articles. At the West African port she took on 170 passengers, eight of whom were military prisoners of the English Government. She had a crew of 160 or thereabouts, and carried a three-pound gun at the stern. The *Appam* was brought to by a shot across her bows from the *Moewe*, when about a hundred yards away, and was boarded without resistance by an armed crew from the *Moewe*. This crew brought with them two bombs, one of which was slung over the bow and the other over the stern of the *Appam*. An officer from the *Moewe* said to the captain of the *Appam* that he was sorry he had to take his ship, asked him how many passengers he had, what cargo, whether he had any specie, and how much coal. When the shot was fired across the bows of the *Appam*, the captain instructed the wireless operator not to touch the wireless instrument, and his officers not to let any one touch the gun on board. The officers and crew of the *Appam*, with the exception of the engine-room force, thirty-five in number, and the second officer, were ordered on board the *Moewe*. The captain, officers and crew of the *Appam* were sent below, where they were held until the evening of the 17th of January, when they and about 150 others, officers and crews of certain vessels previously sunk by the *Moewe*, were ordered back to the *Appam* and kept there as prisoners. At the time of the capture, the senior officer of the boarding party told the chief engineer of the *Appam* he was now a member of the German navy; if he did not obey orders his brains would be blown out, but if he obeyed, not a hair of his head should be touched. The *Appam's* officer was instructed to tell his staff the same thing, and if they did not obey orders they would be brought to the German officer and shot. Inquiries were made by the German officer in command of the *Appam* as to revolutions of the engines, the quantity of coal on hand and the coal consumption for different speeds, and instructions were given that steam be kept up handy, and afterwards the engineer was directed to set the engines at the revolutions required, and the ship got under way.

Lieutenant Berg, who was the German officer in command of the *Appam* after its capture, told the engineer on the second morning that he was then in charge of the ship, asked of him information as to fuel consumption, and said that he expected the engineer to help him all he could, and the more he did for him the better it would be for everybody on the ship. The engineer said he would, and did so. The engines were operated with a bomb secured to the port main injector valve, and a German sailor stationed alongside the bomb with a revolver. There was a guard below of four or five armed Germans, who were relieved from time to time, but did not interfere with the working of the ship. The German officer, Lieutenant Berg, gave directions as to working the engines, and was the only officer on board who wore a uniform.

On the night of the capture, the specie in the specie-room was taken on board the *Moewe*. After Lieutenant Berg took charge of the *Appam*, bombs were slung over her bow and stern, one large bomb, said to contain about two hundred pounds of explosive, was placed on the bridge, and several smaller ones in the chart room. Lieutenant Berg informed the captain of the *Appam*, pointing to one of the bombs, "That is a bomb; if there is any trouble, mutiny, or attempt to take the ship, I have orders to blow up the ship instantly." He also said, "There are other bombs about the ship; I do not want to use them, but I shall be compelled to if there is any trouble." The bombs were kept in the positions stated until the ship arrived at the Virginia Capes, when they were removed. Lieutenant Berg, on reaching Hampton Roads, asked the crew of the *Appam* to drop the anchor, as he had not men to do it.

During the trip to the westward, the officers and crew of the *Appam* were not allowed to see the ship's compass to ascertain her course, and all lights were obscured during the voyage. The German prisoners, with the exception of two who went on board the *Moewe*, were armed and placed over the passengers and crew of the *Appam* as a guard all the way across. For two days after the capture, the *Appam* remained in the vicinity of the *Moewe*, and then was started westward. Her course for the first two or three days was southwesterly, and afterwards westerly, and was continued until her arrival at the Virginia Capes on the 31st of January. The engine-room staff of the *Appam* was on duty operating the vessel across to the United States;

the deck crew of the *Appam* kept the ship clean, and the navigation was conducted entirely by the Germans, the lookouts being mostly German prisoners.

At the time of the capture, the *Appam* was approximately distant 1,590 miles from Emden, the nearest German port; from the nearest available port, namely, Punchello, in the Madeiras, 130 miles; from Liverpool, 1,450 miles; and from Hampton Roads, 3,051 miles. The *Appam* was found to be in first class order, seaworthy, with plenty of provisions, both when captured and at the time of her arrival in Hampton Roads.

The order or commission delivered to Lieutenant Berg by the commander of the *Moewe* is as follows:

Information for the American Authorities. The bearer of this, Lieutenant of the Naval Reserve, Berg, is appointed by me to the command of the captured English steamer *Appam* and has orders to bring the ship into the nearest American harbor and there to lay up. Kommando S. M. H. *Moewe*. Count Zu Dohna. Cruiser Captain and Commander. (Imperial Navy Stamp.) Kommando S. M. S. *Moewe*.

Upon arrival in Hampton Roads, Lieutenant Berg reported his arrival to the Collector, and filed a copy of his instructions to bring the *Appam* into the nearest American port and there to lay up.

On February 2nd, His Excellency, The German Ambassador, informed the State Department of the intention, under alleged treaty rights, to stay in an American port until further notice, and requested that the crew of the *Appam* be detained in the United States for the remainder of the war.

The prisoners brought in by the *Appam* were released by order of the American Government.

On February 16th, and sixteen days after the arrival of the *Appam* in Hampton Roads, the owner of the *Appam* filed the libel in case No. 650, to which answer was filed on March 3rd. On March 7th, by leave of court, an amended libel was filed, by which the libellant sought to recover the *Appam* upon the claim that holding and detaining the vessel in American waters was in violation of the law of nations and the laws of the United States and of the neutrality of the United States. The answer of the respondents to the amended libel alleged that the *Appam* was brought in as a prize by a prize master,

in reliance upon the Treaty of 1799 between the United States and Prussia; that by the general principles of international law the prize master was entitled to bring his ship into the neutral port under these circumstances, and that the length of stay was not a matter for judicial determination; and that proceedings had been instituted in a proper prize court of competent jurisdiction in Germany for the condemnation of the *Appam* as a prize of war; and averred that the American court had no jurisdiction.

The libel against the *Appam's* cargo was filed on March 13th, 1916, and answer filed on March 31st. During the progress of the case, libellant moved the court to sell a part of the cargo as perishable; on motion the court appointed surveyors, who examined the cargo and reported that the parts so designated as perishable should be sold; upon their report orders of sale were entered, under which such perishable parts were sold, and the proceeds of that sale, amounting to over \$600,000, are now in the registry of the court, and the unsold portions of the cargo are now in the custody of the marshal of the Eastern District of Virginia.

The argument in this case has taken wide range, and orally and in printed briefs counsel have discussed many questions which we do not consider necessary to decide in determining the rights involved in these appeals.

From the facts which we have stated, we think the decisive questions resolve themselves into three: First, was the use of an American port, under the circumstances shown, a breach of this Nation's neutrality under the principles of international law. Second, was such use of an American port justified by the existing treaties between the German Government and our own. Third, was there jurisdiction and right to condemn the *Appam* and her cargo in a court of admiralty of the United States.

It is familiar international law that the usual course after the capture of the *Appam* would have been to take her into a German port, where a prize court of that Nation might have adjudicated her status, and, if it so determined, condemned the vessel as a prize of war. Instead of that, the vessel was neither taken to a German port, nor to the nearest port accessible of a neutral power, but was ordered to, and did, proceed over a distance of more than three thousand miles, with a view to laying up the captured ship in an American port.

It was not the purpose to bring the vessel here within the privileges universally recognized in international law, *i. e.*, for necessary fuel or provisions, or because of stress of weather or necessity of repairs, and to leave as soon as the cause of such entry was satisfied or removed. The purpose for which the *Appam* was brought to Hampton Roads, and the character of the ship, are emphasized in the order which we have quoted to take her to an American port and there lay her up and in a note from His Excellency, The German Ambassador, to the Secretary of State, in which the right was claimed to keep the vessel in an American port until further notice. (Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties, Department of State, European War No. 3, page 331,) and a further communication from the German Ambassador forwarding a memorandum of a telegram from the German Government concerning the *Appam* (*Id.* page 333), in which it was stated:

Appam is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Article 19 of the Prusso-American treaty of 1799. Article 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war according to Article 28. The above-mentioned Article 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English.

In view of these facts, and this attitude of the Imperial Government of Germany, it is manifest that the *Appam* was not brought here in any other character than as a prize, captured at sea by a cruiser of the German navy, and that the right to keep her here, as shown in the attitude of the German Government and in the answer to the libel, was rested principally upon the Prussian-American Treaty of 1799.

The principles of international law recognized by this Government, leaving the treaty aside, will not permit the ports of the United States to be thus used by belligerents. If such use were permitted, it would constitute of the ports of a neutral country harbors of safety into which prizes, captured by one of the belligerents, might be safely brought and indefinitely kept.

From the beginning of its history this country has been careful to

maintain a neutral position between warring governments, and not to allow the use of its ports in violation of the obligations of neutrality; nor to permit such use beyond the necessities arising from the perils of the seas or the necessities of such vessels as to seaworthiness, provisions and supplies. Such usage has the sanction of international law, Dana's Note to Wheaton on International Law, 1866, 8th American Edition, Section 391, and accords with our own practice. Moore's Digest of International Law, Vol. 7, 936, 937, 938.

A policy of neutrality between warring nations has been maintained from 1793 to this time. In that year President Washington firmly denied the use of our ports to the French Minister for the fitting out of privateers to destroy English commerce. This attitude led to the enactment of the Neutrality Act of 1794, afterwards embodied in the Act of 1818, enacting a code of neutrality, which among other things inhibited the fitting out and arming of vessels; the augmenting or increasing of the force of armed vessels; or the setting on foot in our territory of military expeditions; and empowering the President to order foreign vessels of war to depart from our ports and compelling them so to do when required by the law of nations. Moore on International Arbitrations, v. 4, 3967 *et seq.*

This policy of the American Government was emphasized in its attitude at the Hague Conference of 1907. Article 21 of the Hague Treaty provides:

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22 provides:

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

To these articles, adherence was given by Belgium, France, Austria-Hungary, Germany, the United States, and a number of other nations.

They were not ratified by the British Government. This Government refused to adhere to Article 23, which provides:

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a Prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

And in the proclamation of the convention the President recited the resolution of the Senate adhering to it,

“subject to the reservation and exclusion of its Article 23 and with the understanding that the last clause of Article 3 thereof implies the duty of a neutral Power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction.” 36 Stat., Pt. II, p. 2438.

While this treaty may not be of binding obligation, owing to lack of ratification, it is very persuasive as showing the attitude of the American Government when the question is one of international law; from which it appears clearly that prizes could only be brought into our ports upon general principles recognized in international law, on account of unseaworthiness, stress of weather, or want of fuel or provisions, and we refused to recognize the principle that prizes might enter our ports and roadsteads, whether under convoy or not, to be sequestrated pending the decision of a prize court. From the history of the conference it appears that the reason for the attitude of the American delegates in refusing to accept Article 23 was that thereby a neutral might be involved in participation in the war to the extent of giving asylum to a prize which the belligerent might not be able to conduct to a home port. See Scott on Peace Conferences, 1899-1907, Vol. II, p. 237 *et seq.*

Much stress is laid upon the failure of this Government to proclaim that its ports were not open to the reception of captured prizes, and it is argued that having failed to interdict the entrance of prizes into

our ports permission to thus enter must be assumed. But whatever privilege might arise from this circumstance it would not warrant the attempted use of one of our ports as a place in which to store prizes indefinitely, and certainly not where no means of taking them out are shown except by the augmentation of her crew, which would be a clear violation of established rules of neutrality.

As to the contention on behalf of the appellants that Article XIX of the Treaty of 1799 justifies bringing in and keeping the *Appam* in an American port, in the situation which we have outlined, it appears that in response to a note from His Excellency, The German Ambassador, making that contention, the American Secretary of State, considering the treaty, announced a different conclusion (Diplomatic Correspondence with Belligerent Governments, *supra*, page 335 *et seq.*) ; and we think this view is justified by a consideration of the terms of the treaty. Article XIX of the Treaty of 1799, using the translation adopted by the American State Department, reads as follows :

The vessels of war, public and private, of both parties, shall carry (*conduire*) freely, wheresoever they please, the vessels and effects taken (*pris*) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (*prises*) be arrested, searched or put under legal process, when they come to and enter the ports of the other party, but may freely be carried (*conduites*) out again at any time by their captors (*le vaisseau preneur*) to the places expressed in their commissions, which the commanding officer of such vessel (*le dit vaisseau*) shall be obliged to show. [But conformably to the treaties existing between the United States and Great Britain, no vessel (*vaisseau*) that shall have made a prize (*prise*) upon British subjects shall have a right to shelter in the ports of the United States, but if (*il est*) forced therein by tempests, or any other danger or accident of the sea, they (*il sera*) shall be obliged to depart as soon as possible.] (The provision concerning the treaties between the United States and Great Britain is no longer in force, having been omitted by the Treaty of 1828. See Compilation of Treaties in Force, 1904, pages 641 and 646.)

We think an analysis of this article makes manifest that the permission granted is to vessels of war and their prizes, which are not to be arrested, searched, or put under legal process, when they come into the ports of the high contracting parties, to the end that they may

be freely carried out by their captors to the places expressed in their commissions, which the commanding officer is obliged to show. When the *Appam* came into the American harbor she was not in charge of a vessel of war of the German Empire. She was a merchant vessel, captured on the high seas and sent into the American port with the intention of being kept there indefinitely, and without any means of leaving that port for another as contemplated in the treaty, and required to be shown in the commission of the vessel bringing in the prize. Certainly such use of a neutral port is very far from that contemplated by a treaty which made provision only for temporary asylum for certain purposes, and can not be held to imply an intention to make of an American port a harbor of refuge for captured prizes of a belligerent government. We can not avoid the conclusion that in thus making use of an American port there was a clear breach of the neutral rights of this Government, as recognized under principles of international law governing the obligations of neutrals, and that such use of one of our ports was in no wise sanctioned by the Treaty of 1799.

It remains to inquire whether there was jurisdiction and authority in an admiralty court of the United States, under these circumstances, to order restoration to an individual owner of the vessel and cargo.

The earliest authority upon this subject in the decisions of this court is found in the case of *Glass v. The Sloop Betsy*, 3 Dallas, 6, decided in 1794, wherein it appeared that the commander of the French privateer, *The Citizen Genet*, captured as a prize on the high seas the sloop *Betsy* and sent the vessel into Baltimore, where the owners of the sloop and cargo filed a libel in the District Court of Maryland, claiming restitution because the vessel belonged to subjects of the King of Sweden, a neutral power, and the cargo was owned jointly by Swedes and Americans. The District Court denied jurisdiction, the Circuit Court affirmed the decree, and an appeal was prosecuted to this court. The unanimous opinion was announced by Mr. Chief Justice Jay, holding that the District Courts of the United States possessed the powers of courts of admiralty, whether sitting as an instance or as a prize court, and sustained the jurisdiction of the District Court of Maryland, and held that that court was competent to inquire into and decide whether restitution should be made to the complainants conformably to the laws of nations and the treaties and laws of the United States.

The question came again before this court in the case of *The Santissima Trinidad*, decided in 1822, reported in 7 Wheaton, 283. In that case it was held that an illegal capture would be invested with the character of a tort, and that the original owners were entitled to restitution when the property was brought within our jurisdiction. The opinion was delivered by Mr. Justice Story, and, after a full discussion of the matter, the court held that such an illegal capture, if brought into the jurisdiction of the courts of the United States, was subject to condemnation and restitution to the owners, and the learned justice said:

If, indeed, the question were entirely new, it would deserve very grave consideration, whether a claim founded on a violation of our neutral jurisdiction could be asserted by private persons, or in any other manner than a direct intervention of the government itself. In the case of a capture made within a neutral territorial jurisdiction, it is well settled, that as between the captors and the captured, the question can never be litigated. It can arise only upon a claim of the neutral sovereign asserted in his own Courts or the Courts of the power having cognizance of the capture itself for the purposes of prize. And by analogy to this course of proceeding, the interposition of our own government might seem fit to have been required before cognizance of the wrong could be taken by our Courts. But the practice from the beginning in this class of causes, a period of nearly 30 years, has been uniformly the other way; and it is now too late to disturb it. If any inconvenience should grow out of it, from reasons of state policy or executive discretion, it is competent for Congress to apply at its pleasure the proper remedy. (Page 349.)

. . . . Whatever may be the exemption of the public ship herself, and of her armament and munitions of war, the prize property which she brings into our ports is liable to the jurisdiction of our Courts, for the purpose of examination and inquiry, and if a proper case be made out, for restitution to those whose possession has been divested by a violation of our neutrality; and if the goods are landed from the public ship in our ports, by the express permission of our own government, that does not vary the case, since it involves no pledge that if illegally captured they shall be exempted from the ordinary operation of our laws. (Page 354.)

In the subsequent cases in this court this doctrine has not been departed from. *L'Inevitable*, 1 Wheaton, 238, 258; *The Estrella*, 4

Wheaton, 298, 308, 9, 10, 11; *La Amistad de Rues*, 5 Wheaton, 385, 390.

It is insisted that these cases involve illegal captures at sea, or violations of neutral obligation, not arising because of the use of a port by sending in a captured vessel and keeping her there in violation of our rights as a neutral. But we are at a loss to see any difference in principle between such cases and breaches of neutrality of the character here involved in undertaking to make of an American port a depository of captured vessels with a view to keeping them there indefinitely. Nor can we consent to the insistence of counsel for appellant that the Prize Court of the German Empire has exclusive jurisdiction to determine the fate of the *Appam* as lawful prize. The vessel was in an American port and under our practice within the jurisdiction and possession of the District Court which had assumed to determine the alleged violation of neutral rights, with power to dispose of the vessel accordingly. The foreign tribunal under such circumstances could not oust the jurisdiction of the local court and thereby defeat its judgment. *The Santissima Trinidad*, *supra*, p. 355.

Were the rule otherwise than this court has frequently declared it to be, our ports might be filled in case of a general war such as is now in progress between the European countries, with captured prizes of one or the other of the belligerents, in utter violation of the principles of neutral obligation which have controlled this country from the beginning.

The violation of American neutrality is the basis of jurisdiction, and the admiralty courts may order restitution for a violation of such neutrality. In each case the jurisdiction and order rests upon the authority of the courts of the United States to make restitution to private owners for violations of neutrality where offending vessels are within our jurisdiction, thus vindicating our rights and obligations as a neutral people.

It follows that the decree in each case must be

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.

**Extracts from a Proclamation by the President of the United States,
August 22, 1870¹**

Whereas a state of war unhappily exists between France on the one side and the North German Confederation and its allies on the other side; and

Whereas the United States are on terms of friendship and amity with all the contending powers and with the persons inhabiting their several dominions; and

Whereas great numbers of the citizens of the United States reside within the territories or dominions of each of the said belligerents and carry on commerce, trade, or other business or pursuits therein, protected by the faith of treaties; and

Whereas great numbers of the subjects or citizens of each of the said belligerents reside within the territory or jurisdiction of the United States and carry on commerce, trade, or other business or pursuits therein; and

Whereas the laws of the United States, without interfering with the free expression of opinion and sympathy, or with the open manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest:

Now, therefore, I, Ulysses S. Grant, President of the United States, in order to preserve the neutrality of the United States and of their citizens and of persons within their territory and jurisdiction, and to enforce their laws, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf and of the law of nations, may thus be prevented from an unintentional violation of the same, do hereby declare and proclaim that by the act passed on the 20th day of April, A. D. 1818, commonly known as the "neutrality law," the following Acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

And I do further declare and proclaim that by the nineteenth article of the treaty of amity and commerce which was concluded between

¹VII Richardson: Messages and Papers of the Presidents, 86.

His Majesty the King of Prussia and the United States of America on the 11th day of July, A. D. 1799, which article was revived by the treaty of May 1, A. D. 1828, between the same parties, and is still in force, it was agreed that "the vessels of war, public and private, of both parties shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to show."

And I do further declare and proclaim that it has been officially communicated to the Government of the United States by the envoy extraordinary and minister plenipotentiary of the North German Confederation at Washington that private property on the high seas will be exempted from seizure by the ships of His Majesty the King of Prussia, without regard to reciprocity.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 22d day of August, A. D. 1870, and of the Independence of the United States of America the ninety-fifth.

[Seal.] U. S. GRANT.

By the President:

HAMILTON FISH,
Secretary of State.

Case of the William P. Frye¹

The Secretary of State to Ambassador Gerard

[Telegram]

No 1446.]

DEPARTMENT OF STATE,

Washington, March 31, 1915.

You are instructed to present the following note to the German Foreign Office:

Under instructions from my Government I have the honor to present a claim for \$228,059.54, with interest from January 28, 1915, against the German Government on behalf of the owners and captain of the American sailing vessel *William P. Frye* for damages suffered by them on account of the destruction of that vessel on the high seas by the German armed cruiser *Prinz Eitel Friedrich*, on January 28, 1915.

The facts upon which this claim arises and by reason of which the German Government is held responsible by the Government of the United States for the attendant loss and damages are briefly as follows:

The *William P. Frye*, a steel sailing vessel of 3,374 tons gross tonnage, owned by American citizens and sailing under the United States flag and register, cleared from Seattle, Wash., November 4, 1914, under charter to M. H. Houser, of Portland, Oreg., bound for Queens-town, Falmouth, or Plymouth for orders, with a cargo consisting solely of 186,950 bushels of wheat owned by the aforesaid Houser and consigned "unto order or to its assigns," all of which appears from the ship's papers which were taken from the vessel at the time of her destruction by the commander of the German cruiser.

On January 27, 1915, the *Prinz Eitel Friedrich* encountered the *Frye* on the high seas, compelled her to stop, and sent on board an armed boarding party, who took possession. After an examination of the ship's papers the commander of the cruiser directed that the cargo be thrown overboard, but subsequently decided to destroy the vessel, and on the following morning, by his order, the *Frye* was sunk.

The claim of the owners and captain consists of the following items:

¹Official Print of the Department of State.

Value of ship, equipment, and outfit.	\$150,000.00
Actual freight as per freight list, 5034 1000/2240 tons at 32-6—£8180-19-6 at \$4.86	39,759.54
Traveling and other expenses of Capt. Kiehne and Arthur Sewall & Co., agents of ship, in connection with mak- ing affidavits, preparing and filing claim.....	500.00
Personal effects of Capt. H. H. Kiehne.....	300.00
Damages covering loss due to deprivation of use of ship..	37,500.00
Total	\$228,059.54

By direction of my Government, I have the honor to request that full reparation be made by the German Government for the destruction of the *William P. Frye* by the German cruiser *Prinz Eitel Friedrich*.

BRYAN.

Ambassador Gerard to the Secretary of State

No. 1984.]

AMERICAN EMBASSY,
Berlin, April 5, 1915.

The following is translation of the reply of the Foreign Office to my note of April 3:

GERMAN FOREIGN OFFICE,
Berlin, April 5, 1915.

The undersigned has the honor to make reply to the note of His Excellency, Mr. James W. Gerard, Ambassador, the United States of America, dated the 3d instant, foreign office No. 2892, relative to claims for damages for the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*.

According to the reports which have reached the German Government the commander of the *Prinz Eitel Friedrich* stopped the *William P. Frye* on the high seas January 27, 1915, and searched her. He found on board a cargo of wheat consigned to Queenstown, Falmouth, or Plymouth to order. After he had first tried to remove the cargo from the *William P. Frye* he took the ship's papers and her crew on board and sank ship.

It results from these facts that the German commander acted quite in accordance with the principles of international law as laid down in the Declaration of London and the German prize ordinance. The ports of Queenstown, Falmouth, and Plymouth, whither the ship visited was bound, are strongly fortified English coast places, which, moreover, serve as bases for the British naval forces. The cargo of wheat being food or foodstuffs, was conditional contraband within the

meaning of article 24, No. 1, of the Declaration of London, and article 23, No. 1, of the German prize ordinance, and was therefore to be considered as destined for the armed forces of the enemy, pursuant to articles 33 and 34 of the Declaration of London and articles 32 and 33 of the German prize ordinance, and to be treated as contraband pending proof of the contrary. This proof was certainly not capable of being adduced at the time of the visiting of the vessel, since the cargo papers read to order. This, however, furnished the conditions under which, pursuant to article 49 of the Declaration of London and article 113 of the German prize ordinance the sinking of the ship was permissible, since it was not possible for the auxiliary cruiser to take the prize into a German port without involving danger to its own security or the success of its operations. The duties devolving upon the cruiser before destruction of the ship, pursuant to article 50 of the Declaration of London and article 116 of the German prize ordinance, were fulfilled by the cruiser in that it took on board all the persons found on the sailing vessel, as well as the ship's papers.

The legality of the measures taken by the German commander is furthermore subject to examination by the German prize court pursuant to article 51 of the Declaration of London and section 1, No. 2, of the German Code of Prize Procedure. These prize proceedings will be instituted before the prize court at Hamburg as soon as the ship's papers are received and will comprise the settlement of questions whether the destruction of the cargo and the ship was necessary within the meaning of article 49 of the Declaration of London; whether the property sunk was liable to capture; and whether, or to what extent, indemnity is to be awarded the owners. In the trial the owners of ship and cargo would be at liberty, pursuant to article 34, paragraph 3, of the Declaration of London, to adduce proof that the cargo of wheat had an innocent destination and did not, therefore, have the character of contraband. If such proof is not adduced, the German Government would not be liable for any compensation whatever, according to the general principles of international law.

However, the legal situation is somewhat different in the light of the special stipulations applicable to the relations between Germany and the United States since article 13 of the Prussian-American treaty of friendship and commerce of July 11, 1799, taken in connection with article 12 of Prussian-American treaty of commerce and navigation of May 1, 1828, provides that contraband belonging to the subjects or citizens of either party can not be confiscated by the other in any case but only detained or used in consideration of payment of the full value of the same. On the ground of this treaty stipulation which is as a matter of course binding on the German prize court the American owners of ship and cargo would receive compensation even if the court should declare the cargo of wheat to be contraband. Nevertheless the approaching prize proceedings are not rendered superfluous since the competent prize court must examine into the legality of the

capture and destruction and also pronounce upon the standing of the claimants and the amount of indemnity.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government and avails himself, etc.

(Signed) JAGOW.

April 4, 1915.

GERARD.

The Secretary of State to Ambassador Gerard
No. 1583.]

DEPARTMENT OF STATE,
Washington, April 28, 1915.

You are instructed to present the following note to the German Foreign Office:

In reply to Your Excellency's note of the 5th instant, which the Government of the United States understands admits the liability of the Imperial German Government for the damages resulting from the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich* on January 28 last, I have the honor to say, by direction of my Government, that while the promptness with which the Imperial German Government has admitted its liability is highly appreciated, my Government feels that it would be inappropriate in the circumstances of this case, and would involve unnecessary delay to adopt the suggestion in your note that the legality of the capture and destruction, the standing of the claimants, and the amount of indemnity should be submitted to a prize court.

Unquestionably the destruction of this vessel was a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia, and the United States Government, by virtue of its treaty rights, has presented to the Imperial German Government a claim for indemnity on account of the resulting damages suffered by American citizens. The liability of the Imperial German Government and the standing of the claimants as American citizens and the amount of indemnity are all questions which lend themselves to diplomatic negotiation between the two Governments, and happily the question of liability has already been settled in that way. The status of the claimants and the amount of the indemnity are the only questions remaining to be settled, and it is appropriate that they should be dealt with in the same way.

The Government of the United States fully understands that, as stated in your excellency's note, the German Government is liable under the treaty provisions above mentioned for the damages arising from the destruction of the cargo as well as from the destruction of the vessel. But it will be observed that the claim under discussion

does not include damages for the destruction of the cargo, and the question of the value of the cargo therefore is not involved in the present discussion.

The Government of the United States recognizes that the German Government will wish to be satisfied as to the American ownership of the vessel, and the amount of the damages sustained in consequence of her destruction.

These matters are readily ascertainable and if the German Government desires any further evidence in substantiation of the claim on these points in addition to that furnished by the ship's papers, which are already in the possession of the German Government, any additional evidence found necessary will be produced. In that case, however, inasmuch as any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined in the United States than elsewhere, on account of the presence there of the owners and captain of the *William P. Frye* and their documentary records, and other possible witnesses, the Government of the United States ventures to suggest the advisability of transferring the negotiations for the settlement of these points to the Imperial German embassy at Washington.

In view of the admission of liability by reason of specific treaty stipulations, it has become unnecessary to enter into a discussion of the meaning and effect of the Declaration of London, which is given some prominence in Your Excellency's note of April 5, further than to say that, as the German Government has already been advised, the Government of the United States does not regard the Declaration of London as in force.

BRYAN.

Ambassador Gerard to the Secretary of State

[Telegram]

No. 2391.]

AMERICAN EMBASSY,
Berlin, June 7, 1915.

The following is the text of the reply of the German Government in the *Frye* case:

The undersigned has the honor to make the following reply to the note of His Excellency Mr. James W. Gerard, Ambassador of the United States of America, dated April 30, 1915 (F. O. No. 3291), on the subject of the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*:

The German Government can not admit that, as the American Government assumes, the destruction of the sailing vessel mentioned

constitutes a violation of the treaties concluded between Prussia and the United States at an earlier date and now applicable to the relations between the German Empire and the United States or of the American rights derived therefrom. For these treaties did not have the intention of depriving one of the contracting parties engaged in war of the right of stopping the supply of contraband to his enemy when he recognizes the supply of such articles as detrimental to his military interests. On the contrary, Article 13 of the Prussian-American Treaty of July 11, 1799, expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it. As a matter of course, the obligation of the party at war to pay compensation to the interested persons of the neutral contracting party remains in force whatever be the manner of stopping the supply.

According to general principles of international law, any exercise of the right of control over the trade in contraband is subject to the decision of the Prize Courts, even though such right may be restricted by special treaties. At the beginning of the present war Germany, pursuant to these principles, established by law prize jurisdiction for cases of the kind under consideration. The case of the *William P. Frye* is likewise subject to the German prize jurisdiction, for the Prussian-American Treaties mentioned contain no stipulation as to how the amount of the compensation provided by Article 13 of the treaty cited is to be fixed. The German Government, therefore, complies with its treaty obligations to a full extent when the Prize Courts instituted by it in accordance with international law proceed in pursuance of the treaty stipulations and thus award the American interested persons equitable indemnity. There would, therefore, be no foundation for a claim of the American Government, unless the Prize Courts should not grant indemnity in accordance with the treaty; in such an event, however, the German Government would not hesitate to arrange for equitable indemnity notwithstanding. For the rest, prize proceedings in the case of the *Frye* are indispensable, apart from the American claims, for the reason that other claims of neutral and enemy interested parties are to be considered in the matter.

As was stated in the note of April 4 last, the Prize Court will have to decide the questions whether the destruction of the ship and cargo was legal; whether and under what conditions the property sunk was liable to confiscation, and to whom and in what amount indemnity is to be paid provided application therefor is received. Since the decision of the Prize Court must first be awaited before any further position is taken by the German Government, the simplest way for the American interested parties to settle their claims would be to enter them in the competent quarter in accordance with the provisions of the German Code of Prize Procedure.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government, and avails himself at the same time of the opportunity to renew the assurances of his most distinguished consideration.

(Signed.) v. JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

No. 1868.]

DEPARTMENT OF STATE,
Washington, June 24, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

I have the honor to inform Your Excellency that I duly communicated to my Government your note of the 7th instant on the subject of the claim presented in my note of April 3d last, on behalf of the owners and captain of the American sailing vessel *William P. Frye* in consequence of her destruction by the German auxiliary cruiser *Prinz Eitel Friedrich*.

In reply I am instructed by my Government to say that it has carefully considered the reasons given by the Imperial German Government for urging that this claim should be passed upon by the German Prize Court instead of being settled by direct diplomatic discussion between the two Governments, as proposed by the Government of the United States, and that it regrets to find that it can not concur in the conclusions reached by the Imperial German Government.

As pointed out in my last note to you on this subject, dated April 30, the Government of the United States has considered that the only question under discussion was the method which should be adopted for ascertaining the amount of the indemnity to be paid under an admitted liability, and it notes with surprise that in addition to this question the Imperial German Government now desires to raise some questions as to the meaning and effect of the treaty stipulations under which it has admitted its liability.

If the Government of the United States correctly understands the position of the Imperial German Government as now presented, it is that the provisions of Article 13 of the Treaty of 1799 between the United States and Prussia, which is continued in force by the Treaty of 1828, justified the commander of the *Prinz Eitel Friedrich* in sinking the *William P. Frye*, although making the Imperial German Government liable for the damages suffered in consequence, and that inasmuch as the treaty provides no specific method for ascertaining the

amount of indemnity to be paid, that question must be submitted to the German Prize Court for determination.

The Government of the United States, on the other hand, does not find in the treaty stipulations mentioned any justification for the sinking of the *Frye*, and does not consider that the German Prize Court has any jurisdiction over the question of the amount of indemnity to be paid by the Imperial German Government on account of its admitted liability for the destruction of an American vessel on the high seas.

You state in your note of the 7th instant that Article 13 of the above-mentioned treaty of 1799 "expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it can not be accomplished in any other way, the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it."

The Government of the United States can not concur in this conclusion. On the contrary, it holds that these treaty provisions do not authorize the destruction of a neutral vessel in any circumstances. By its express terms the treaty prohibits even the detention of a neutral vessel carrying contraband if the master of the vessel is willing to surrender the contraband. Article 13 provides "in the case supposed of a vessel stopped for articles of contrabands if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage."

In this case the admitted facts show that pursuant to orders from the commander of the German cruiser, the master of the *Frye* undertook to throw overboard the cargo of that vessel, but that before the work of delivering out the cargo was finished the vessel with the cargo was sunk by order of the German commander.

For these reasons, even if it be assumed as Your Excellency has done, that the cargo was contraband, your contention that the destruction of the vessel was justified by the provisions of Article 13 does not seem to be well founded. The Government of the United States has not thought it necessary in the discussion of this case to go into the question of the contraband or non-contraband character of the cargo. The Imperial German Government has admitted that this question makes no difference so far as its liability for damages is concerned, and the result is the same so far as the justification for the sinking of the vessel is concerned. As shown above, if we assume that the cargo was contraband, the master of the *Frye* should have been allowed to deliver it out, and the vessel should have been allowed to proceed on her voyage.

On the other hand, if we assume that the cargo was noncontraband, the destruction either of the cargo or the vessel could not be justified in the circumstances of this case under any accepted rule of interna-

tional law. Attention is also called to the provisions of Article 12 of the Treaty of 1785 between the United States and Prussia, which, like Article 13 of the Treaty of 1799, was continued in force by Article 12 of the Treaty of 1828. So far as the provisions of Article 12 of the Treaty of 1785 apply to the question under consideration, they are as follows:

"If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other."

It seems clear to the Government of the United States, therefore, that whether the cargo of the *Frye* is regarded as contraband or as non-contraband, the destruction of the vessel was, as stated in my previous communication on this subject, "a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia."

For these reasons the Government of the United States must disagree with the contention which it understands is now made by the Imperial German Government that an American vessel carrying contraband may be destroyed without liability or accountability beyond the payment of such compensation for damages as may be fixed by a German Prize Court. The issue thus presented arises on a disputed interpretation of treaty provisions, the settlement of which requires direct diplomatic discussion between the two Governments, and can not properly be based upon the decision of the German Prize Court, which is in no way conclusive or binding upon the Government of the United States.

Moreover, even if no disputed question of treaty interpretation was involved, the admission by the Imperial German Government of its liability for damages for sinking the vessel would seem to make it unnecessary, so far as this claim is concerned, to ask the Prize Court to decide "whether the destruction of the ship and cargo was legal, and whether and under what conditions the property sunk was liable to confiscation," which, you state in your note dated June 7, are questions which should be decided by the Prize Court. In so far as these questions relate to the cargo, they are outside of the present discussion, because, as pointed out in my previous note to you on the subject dated April 30, "the claim under discussion does not include damages for the destruction of the cargo."

The real question between the two Governments is what reparation must be made for a breach of treaty obligations, and that is not a question which falls within the jurisdiction of a Prize Court.

In my first note on the subject the Government of the United States requested that "full reparation be made by the Imperial German Government for the destruction of the *William P. Frye*." Reparation necessarily includes an indemnity for the actual pecuniary loss sustained, and the Government of the United States takes this opportunity to assure the Imperial German Government that such an indemnity, if promptly paid, will be accepted as satisfactory reparation, but it does not rest with a Prize Court to determine what reparation should be made or what reparation would be satisfactory to the Government of the United States.

Your Excellency states in your note of June 7 that in the event the Prize Court should not grant indemnity in accordance with the treaty requirements, the German Government would not hesitate to arrange for equitable indemnity, but it is also necessary that the Government of the United States should be satisfied with the amount of the indemnity, and it would seem to be more appropriate and convenient that an arrangement for equitable indemnity should be agreed upon now rather than later. The decision of the Prize Court, even on the question of the amount of indemnity to be paid, would not be binding or conclusive on the Government of the United States.

The Government of the United States also dissents from the view expressed in your note that "there would be no foundation for a claim of the American Government unless the Prize Courts should not grant indemnity in accordance with the treaty." The claim presented by the American Government is for an indemnity for a violation of a treaty, in distinction from an indemnity in accordance with the treaty, and therefore is a matter for adjustment by direct diplomatic discussion between the two Governments and is in no way dependent upon the action of a German Prize Court.

For the reasons above stated the Government of the United States can not recognize the propriety of submitting the claim presented by it on behalf of the owners and captain of the *Frye* to the German Prize Court for settlement.

The Government of the United States is not concerned with any proceedings which the Imperial German Government may wish to take on "other claims of neutral and enemy interested parties" which have not been presented by the Government of the United States, but which you state in your note of June 7 make Prize Court proceedings in this case indispensable, and it does not perceive the necessity for postponing the settlement of the present claim pending the consideration of those other claims by the Prize Court.

The Government of the United States, therefore, suggests that the Imperial German Government reconsider the subject in the light of these considerations, and because of the objections against resorting to the Prize Court the Government of the United States renews its

former suggestion that an effort be made to settle this claim by direct diplomatic negotiations.

LANSING.

Ambassador Gerard to the Secretary of State

[Telegram]

No. 2656.]

AMERICAN EMBASSY,
Berlin, July 30, 1915.

Following note received:

FOREIGN OFFICE, *Berlin, July 30, 1915.*

The undersigned has the honor to inform His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to the note of the 26th ultimo, Foreign Office No. 3990, on the subject of the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*, that the points of view brought out in the note have been carefully examined by the Imperial German Government. This examination has led to the following conclusions:

The Government of the United States believes that it is incumbent upon it to take the position that the treaty rights to which America is entitled, as contained in Article 12 of the Prussian-American treaty of amity and commerce of September 10, 1785, in Article 13 of the Prussian-American treaty of amity and commerce of July 11, 1799, were violated by the sinking of the *William P. Frye*. It interprets these articles as meaning that a merchantman of the neutral contracting party carrying contraband can not in any circumstances be destroyed by a war-ship of the belligerent contracting party, and that the sinking of the *William P. Frye* was, therefore, in violation of the treaty, even if her cargo should have consisted of contraband, which it leaves outside of the discussion.

The German Government can not accept this view. It insists as heretofore that the commander of the German auxiliary cruiser acted in the legal exercise of the right of control of trade in contraband enjoyed by war-ships of belligerent nations, and that the treaty stipulations mentioned merely oblige the German Government to make compensation for the damage sustained by the American citizens concerned.

It is not disputed by the American Government that, according to general principles of international law, a belligerent is authorized in sinking neutral vessels under almost any conditions for carrying contraband. As is well known, these principles were laid down in Articles 49 and 50 of the Declaration of London, and were recognized at that time by the duly empowered delegates of all the nations which par-

ticipated in the conference, including the American delegates, to be declarative of existing international law (see preliminary clause of the Declaration of London); moreover, at the beginning of the present war, the American Government proposed to the belligerent nations to ratify the Declaration of London and give its provisions formal validity also.

The German Government has already explained in its note of April 4 last for what reasons it considers that the conditions justifying the sinking under international law were present in the case of the *William P. Frye*. The cargo consisted of conditional contraband, the destination of which for the hostile armed forces was to be presumed under the circumstances; no proof to overcome this presumption has been furnished. More than half the cargo of the vessel was contraband, so that the vessel was liable to confiscation. The attempt to bring the American vessel into a German port would have greatly imperiled the German vessel in the given situation of the war, and at any rate practically defeated the success of her further operations. Thus the authority for sinking the vessel was given according to general principles of international law.

There only remains then to be examined the question how far the Prussian-American treaty stipulations modify these principles of international law.

In this connection Article 12 of the treaty of 1785 provides that in the event of a war between one of the contracting parties with another power the free commerce and intercourse of the nationals of the party remaining neutral with the belligerent powers shall not be interrupted, but that on the contrary the vessel of the neutral party may navigate freely to and from the ports of the belligerent powers, even neutralizing enemy goods on board thereof. However, this article merely formulates general rules for the freedom of maritime intercourse and leaves the question of contraband untouched; the specific stipulations on this point are contained in the following article, which is materially identical with Article 13 of the treaty of 1799 now in force.

The plain intention of Article 13 is to establish a reasonable compromise between the military interests of the belligerent contracting party and the commercial interests of the neutral party. On the one hand the belligerent party is to have the right to prevent the transportation of war supplies to his adversaries even when carried on vessels of the neutral party; on the other hand the commerce and navigation of the neutral party is to be interfered with as little as possible by the measures necessary for such prevention, and reasonable compensation is to be paid for any inconvenience or damage which may nevertheless ensue from the proceeding of the belligerent party.

Article 13 recites the following means whereby the belligerent party can prevent the vessels of the neutral party from carrying war sup-

plies to his adversary. The detention of the ship and cargo for such length of time as the belligerent may think necessary; furthermore the taking over of the war stores for his own use, paying the full value of the same as ascertained at the place of destination. The right of sinking is not mentioned in the treaty and is therefore neither expressly permitted nor expressly prohibited, so that on this point the party stipulations must be supplemented by the general rules of international law. From the meaning and spirit of the treaty it really appears out of the question that it was intended to expect of the belligerent that he should permit a vessel loaded with contraband, for example a shipment of arms and ammunition of decisive importance for the outcome of the war, to proceed unhindered to his enemy when circumstances forbid the carrying of the vessel into port, if the general rules of international law allow sinking of the vessel.

The remaining stipulations of Article 13 must likewise be considered in this light; they provide that the captain of a vessel stopped shall be allowed to proceed on his voyage if he delivers out the contraband to the war-ship which stopped his vessel. For such delivering out can not of course be considered when the ensuing loss of time imperils either the war-ship herself or the success of her other operations. In the case of the *William P. Frye* the German commander at first tried to have matters settled by the delivery of contraband, but convinced himself of the impracticability of this attempt in that it would expose his ship to attack by whatever superior force of enemy war vessels pursuing him and was accordingly obliged to determine upon the sinking of the *Frye*. Thus he did not exceed on this point the limits to which he was bound by Article 13.

However, Article 13 asserts itself here to the extent that it founds the obligation to compensate the American citizens affected, whereas according to the general rules of international law the belligerent party does not need to grant compensation for a vessel lawfully sunk. For if, by Article 13, the mere exercise of right of highways makes the belligerent liable for compensation, this must apply *a fortiori* to the exercise of the right of sinking.

The question whether the German commander acted legally was primarily a subject for the consideration of the German prize courts according to general principles of international law as laid down; also in Article 1 of The Hague Convention for the establishment of an international prize court and in Article 51 of the Declaration of London. The German Government consequently laid the case of *William P. Frye* before the competent prize court at Hamburg, as was stated in its note of the 7th ultimo. This court found by its judgment of the 10th instant that the cargo of the American vessel *William P. Frye* was contraband, that the vessel could not be carried into port, and that the sinking was therefore justified; at the same time the court expressly recognized the validity of the Prussian-American

treaty stipulations severally mentioned for the relations between the German Empire and America, so that the sinking of the ship and cargo, so far as American property, makes the German Empire liable for indemnity. The prize court was unable to fix the indemnity itself, since it had no data before it, failing the receipt of the necessary detail from the parties interested.

It will now be necessary to settle these points in a different way. The German Government suggests as the simplest way that each of the two Governments designate an expert, and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her. The German Government will promptly pay the amount of indemnity thus ascertained; it expressly declares, however, reverting to what has been stated above, that this payment does not constitute satisfaction for the violation of American treaty rights, but a duty or policy of this Government founded on the existing treaty stipulations.

Should the American Government not agree to this manner of settling the matter, the German Government is prepared to submit the difference of opinion as being a question of the interpretation of the existing treaties between Germany and the United States to the tribunal at The Hague, pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

The undersigned begs to suggest that the Ambassador bring the above to the attention of his Government and avails himself, etc.,
VON JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

No. 2057.]

DEPARTMENT OF STATE,
Washington, August 10, 1915.

You are instructed to present the following note to the German Minister for Foreign Affairs:

Under instructions from my Government, I have the honor to inform Your Excellency in reply to your note of July 30 in regard to the claim for reparation for the sinking of the *William P. Frye*, that the Government of the United States learns with regret that the objections urged by it against the submission of this case to the prize court for decision have not commended themselves to the Imperial German Government, and it equally regrets that the reasons presented by the Imperial German Government for submitting this case to the prize court have failed to remove the objections of the Government of the

United States to the adoption of that course. As this disagreement has been reached after the full presentation of the views of both Governments in our previous correspondence, a further exchange of views on the questions in dispute would doubtless be unprofitable, and the Government of the United States therefore welcomes Your Excellency's suggestion that some other way should be found for settling this case.

The two methods of settlement proposed as alternative suggestions in Your Excellency's note have been given careful consideration, and it is believed that if they can be combined so that they may both be adopted, they will furnish a satisfactory basis for the solution of the questions at issue.

The Government of the United States has already expressed its desire that the question of the amount of indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the *Frye* should be settled by diplomatic negotiation, and it entirely concurs with the suggestion of the Imperial German Government that the simplest way would be to agree, as proposed in your note, "that each of the two Governments designate an expert and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her," to be paid by the Imperial German Government when ascertained as stated in your note. It is assumed that the arrangement will include some provision for calling in an umpire in case the experts fail to agree.

The Government of the United States notes that your suggestion is made with the express reservation that a payment under this arrangement would not constitute an admission that American treaty rights had been violated, but would be regarded by the Imperial German Government merely as fulfilling a duty or policy founded on existing treaty stipulations. A payment made on this understanding would be entirely acceptable to the Government of the United States, provided that the acceptance of such payment should likewise be understood to be without prejudice to the contention of the Government of the United States that the sinking of the *Frye* was without legal justification, and provided also that an arrangement can be agreed upon for the immediate submission to arbitration of the question of legal justification, in so far as it involves the interpretation of existing treaty stipulations.

There can be no difference of opinion between the two Governments as to the desirability of having this question of the true intent and meaning of their treaty stipulations determined without delay, and to that end the Government of the United States proposes that the alternative suggestion of the Imperial German Government also be adopted, so that this question of treaty interpretation can be submitted forth-

with to arbitration pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

In this way both the question of indemnity and the question of treaty interpretation can promptly be settled, and it will be observed that the only change made in the plan proposed by the Imperial German Government is that instead of eliminating either one of its alternative suggestions, they are both given effect in order that both of the questions under discussion may be dealt with at the same time.

If this proposal proves acceptable to the Imperial German Government, it will be necessary also to determine whether, pending the arbitral award, the Imperial German Government shall govern its naval operations in accordance with its own interpretation, or in accordance with the interpretation maintained by the United States, as to the obligations imposed by their treaty stipulations, and the Government of the United States would be glad to have an expression of the views of the Imperial German Government on this point.

LANSING.

Ambassador Gerard to the Secretary of State

[Telegram]

AMERICAN EMBASSY,

Berlin, September 20, 1915.

Following note received from the Foreign Office to-day:

FOREIGN OFFICE,

Berlin, September 19, 1915.

The undersigned has the honor to make the following reply to the note of His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, dated 13th ultimo, on the subject of the claim for reparation for the sinking of the American merchantman *William P. Frye*.

With regard first to the ascertainment of the damages by experts the German Government believes that it should dispense with the nomination of an umpire. In the cases of the ascertainment of damages hitherto arranged between the German Government and a neutral Government from similar causes the experts named by the two parties have always reached an agreement as to the amount of the damage without difficulty; should it not be possible, however, to reach an agreement on some point, it could probably be settled by diplomatic negotiation. Assuming that the American Government agrees to this, the German Government names as its expert Dr. Kepny, of Bremen, director of the North German Lloyds; it begs to await the designation of the American expert.

The German Government declares that it agrees to the proposal of the American Government to separate the question of indemnity from the question of the interpretation of the Prussian-American treaties of 1785, 1799, and 1828. It therefore again expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the American side, but it will admit that the settlement of the question of indemnity does not prejudice the arrangement of the difference of opinion concerning the interpretation of the treaty rights, and that this dispute is left to be decided by The Hague tribunal of arbitration.

The negotiations relative to the signing of the *compromis* provided by Article 52 of The Hague Arbitration Convention would best be conducted between the Foreign Office and the American Embassy in Berlin in view of the difficulties in the way of instructing the Imperial Ambassador at Washington. In case the American Government agrees, the Foreign Office is prepared to submit to the Embassy a draft of such a *compromis*.

The American Government's inquiry whether the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question pending the arbitral proceedings has been carefully considered by German Government. From the standpoint of law and equity it is not prevented in its opinion from proceeding against American ships carrying contraband according to its interpretation until the question is settled by arbitration. For the German Government does not need to depart from the application of generally recognized rules of the law of maritime war, as the Declaration of London, unless and in so far as an exception based on a treaty, is established beyond all doubt; in the case of the present difference of opinion between the German and the American Governments such an exception could not be taken to be established except on the ground of the arbitral award. Moreover, the disadvantages to Germany which would ensue from the American interpretation of the treaty stipulations would be so much greater as to be out of proportion to those which the German interpretation would entail for the United States. For whereas the American interpretation would materially impede Germany in her conduct of warfare, hardly any particular disadvantage to American citizens would result from the German interpretation, since they receive full reparation for any property damage sustained.

Nevertheless the German Government, in order to furnish to the American Government evidence of its conciliatory attitude, has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband, even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port. On the other hand, it must reserve to itself the right to destroy vessels

carrying absolute contraband wherever such destruction is permissible according to the provisions of the Declaration of London.

The undersigned begs to suggest that the Ambassador bring the above to the knowledge of his Government, and avails himself of the opportunity to renew, etc.

VON JAGOW.

GERARD.

The Secretary of State to Ambassador Gerard

[Telegram]

DEPARTMENT OF STATE,

Washington, October 12, 1915.

You are instructed to present the following note to the German Minister of Foreign Affairs:

In reply to Your Excellency's note of September 19, on the subject of the claim for damages for the sinking of the American merchantman *William P. Frye*, I am instructed by the Government of the United States to say that it notes with satisfaction the willingness of the Imperial German Government to settle the questions at issue in this case by referring to a joint commission of experts the amount of the indemnity to be paid by the Imperial German Government under its admitted liability for the losses of the owners and captain on account of the destruction of the vessel, and by referring to arbitration the question of the interpretation of treaty rights. The Government of the United States further notes that in agreeing to this arrangement the Imperial German Government expressly states that in making payment it does not acknowledge the violation of the treaty as contended by the Government of the United States, and that the settlement of the question of indemnity does not prejudice the arrangement of the differences of opinion between the two governments concerning the interpretation of the treaty rights. The Government of the United States understands that this arrangement will also be without prejudice to its own contention in accordance with the statement of its position in its note of August 10 last to Your Excellency on this subject, and the Government of the United States agrees to this arrangement on that understanding. Your Excellency states that the Imperial German Government believes that the nomination of an umpire should be dispensed with, because it has been the experience of the Imperial German Government that the experts named in such cases have always reached an agreement without difficulty, and that should they disagree on some point, it could probably be settled by diplomatic negotiation. The

Government of the United States entirely concurs in the view that it is not necessary to nominate an umpire in advance. It is not to be assumed that the experts will be unable to agree, or that if they are, the point in dispute can not be settled by diplomatic negotiation, but the Government of the United States believes that in agreeing to this arrangement it should be understood in advance that in case the amount of indemnity is not settled by the joint commission of experts or by diplomatic negotiation, the question will then be referred to an umpire if that is desired by the Government of the United States.

Assuming that this understanding is acceptable to the German Government, it will only remain for the Government of the United States to nominate its expert to act with the expert already nominated by the German Government on the joint commission. It seems desirable to the Government of the United States that this joint commission of experts should meet without delay as soon as the American member is named and that its meetings should be held in the United States, because, as pointed out in my note to you of April 30 last, any evidence which the German Government may wish to have produced is more acceptable and can more conveniently be examined there than elsewhere.

With reference to the agreement to submit to arbitration the question of treaty interpretation, the Government of the United States notes that in answer to its inquiry whether, pending the arbitral proceedings, the German Government will govern its naval operations in accordance with the German or American interpretation of the treaty stipulations in question, the reply of the German Government is that it "has issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port," and that "on the other hand it must reserve to itself the right to destroy vessels carrying absolute contraband whenever such destruction is permissible according to the provisions of the Declaration of London."

Without admitting that the Declaration of London is in force, and on the understanding that the requirement in Article 50 of the Declaration that "before the vessel is destroyed all persons on board must be placed in safety" is not satisfied by merely giving them an opportunity to escape in lifeboats, the Government of the United States is willing, pending the arbitral award in this case, to accept the Declaration of London as the rule governing the conduct of the German Government in relation to the treatment of American vessels carrying cargoes of absolute contraband. On this understanding the Government of the United States agrees to refer to arbitration this question of treaty interpretation.

The Government of the United States concurs in the desire of the Imperial German Government that the negotiations relative to the signing of the compromise referring this question of treaty interpreta-

tion to arbitration under the provisions of Article 52 of The Hague Arbitration Convention, should be conducted between the German Foreign Office and the American Embassy in Berlin, and the Government of the United States will be glad to receive the draft compromise, which you inform me the Foreign Office is prepared to submit to the American Ambassador in Berlin. Anticipating that it may be convenient for the Imperial German Government to know in advance of these negotiations the preference of the Government of the United States as to the form of arbitration to be arranged for in the compromise, my Government desires me to say that it would prefer, if agreeable to the Imperial Government, that the arbitration should be by summary procedure, based upon the provisions of Articles 86 to 90, inclusive, of The Hague Arbitration Convention, rather than the longer form of arbitration before the Permanent Court at The Hague.

Arrange for simultaneous publication of this note at earliest date which will give you time to notify the Department.

LANSING.

Ambassador Gerard to the Secretary of State

No. 1964.]

AMERICAN EMBASSY,
Berlin, December 2, 1915.

SIR: With reference to my telegram of even date¹ and to previous correspondence on the subject of the claim for damages for the sinking of the American merchantman *William P. Frye*, I have the honor to transmit to you herewith a copy and translation of a note received from the Imperial Foreign Office, dated November 29, 1915, which replies to a note which I addressed to the Imperial Foreign Office on October 14, 1915, pursuant to the instructions contained in your telegram No. 2291, of October 12, 1915.

A copy and translation of the draft of a *compromis* submitted by the Imperial German Government is likewise transmitted herewith.

I have, etc.,

GERARD.

[Inclosure—Translation]

The German Minister for Foreign Affairs to Ambassador Gerard

BERLIN, *November 29, 1915.*

The undersigned has the honor to inform His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to

¹Not printed.

the note of October 14, F. O. No. 5671, relative to indemnity for the sinking of the American merchant vessel *William P. Frye*, as well as to the settlement by arbitration of the difference of opinion which has arisen on this occasion, as follows:

With regard first to the ascertainment of indemnity for the vessel sunk, the German Government is in agreement with the American Government in principle that the amount of damages be fixed by two experts, one each to be nominated by the German and the American Governments. The German Government regrets that it can not comply with the wish of the American Government to have the experts meet in Washington, since the expert nominated by it, Dr. Greve, of Bremen, director of the North German Lloyd, is unable to get away from here, and furthermore would be exposed to the danger of capture during a voyage to America in consequence of the conduct of maritime war by England contrary to international law. Should the American expert likewise be unable to get away, the two experts might perhaps get in touch with each other by correspondence.

The German Government likewise regrets that it can not assent at this time to the nomination of an umpire as desired by the American Government, for apart from the fact that in all probability the experts will reach an agreement in the case of the *William P. Frye* with the same facility as was the case with similar negotiations with other neutral Governments, the assent of the German Government to the consultation of an umpire would depend materially upon whether the differences of opinion between the two experts pertained to questions of principle or merely to the appraisement of certain articles. The consultation of an umpire could only be considered at all in the case of appraisements of this nature.

Should the American Government insist on its demands for the meeting of the experts at Washington or the early choice of an umpire, the only alternative would be to arrange the fixing of damages by diplomatic negotiation. In such an event the German Government begs to await the transmission of a statement of particulars of the various claims for damages accompanied by the necessary proofs.

With regard to the arbitral treatment of the difference of opinion relative to the interpretation of certain stipulations of the Prussian-American commercial treaties, the German Government has drawn up the inclosed draft of a *compromis*, which would have to be worded in the German and English languages and drawn up with due consideration of the two alternating texts. It is true that the draft does not accommodate the suggestions of the American Government so far as it is not in accordance with the rules of summary procedure provided by chapter 4 of The Hague Arbitration Convention, but with the rules of regular procedure. The summary procedure is naturally intended only for differences of opinion of inferior importance, whereas the German Government attaches very particular importance to the interpretation of the Prussian-American treaties which have existed

for over 100 years. Pursuant to the agreement made, any proposed amendments would have to be discussed between the Foreign Office and the American Embassy, and oral discussions would appear to be advisable.

Until the decision of the permanent court of arbitration, the German naval forces will sink only such American vessels as are loaded with absolute contraband, when the preconditions provided by the Declaration of London are present. In this the German Government quite shares the view of the American Government that all possible care must be taken for the security of the crew and passengers of a vessel to be sunk. Consequently, the persons found on board of a vessel may not be ordered into her lifeboats except when the general conditions, that is to say, the weather, the condition of the sea, and the neighborhood of the coasts afford absolute certainty that the boats will reach the nearest port. For the rest the German Government begs to point out that in cases where German naval forces have sunk neutral vessels for carrying contraband, no loss of life has yet occurred.

The undersigned begs to give expression to the hope that it will be possible for the two Governments to reach a complete understanding regarding the case of the *William P. Frye* on the above basis, and avails himself of this opportunity to renew to His Excellency, the Ambassador, the assurance of his highest consideration.

VON JAGOW.

[Translation]

ARBITRATION COMPROMIS

The Imperial German Government and the Government of the United States of America having reached an agreement to submit to a court of arbitration the difference of opinion which has arisen, occasioned by the sinking of the American merchant vessel *William P. Frye* by a German war-ship, in respect of the interpretation of certain stipulations of the Prussian-American treaties of amity and commerce, the undersigned, duly authorized for this purpose, have agreed to the following *compromis*:

ARTICLE I

A court of arbitration composed in accordance with the following stipulations is charged with the decision of the legal question:

Whether according to the treaties existing between the parties, in particular Article XIII of the Prussian-American treaty of amity and commerce of July 11, 1799, the belligerent contracting party is prevented from sinking merchant vessels of the neutral contracting party for carrying contraband when such sinking is permissible according to general principles of international law.

ARTICLE II

The court of arbitration shall be composed of five arbitrators to be chosen among the members of the permanent tribunal of arbitration at The Hague.

Each government will choose two arbitrators, of whom only one may be a national of such country, as soon as possible, at the latest within two weeks from the day this *compromis* is signed. The four arbitrators thus nominated shall choose an umpire within four weeks after they have been notified of their nomination; in case of an equal vote the president of the Swiss federal council shall be requested to select the umpire.

ARTICLE III

On March 1, 1916, each party shall transmit to the bureau of the permanent tribunal of arbitration 18 copies of its argument with authenticated copies of all documents and correspondence on which it intends to rely in the case. The bureau will arrange without delay for the transmission to the arbitrators and to the parties, each arbitrator to receive two copies, each party three copies. Two copies shall remain in the archives of the bureau.

On May 1, 1916, the parties shall deposit their countercases with the supporting evidence and their statements in conclusion.

ARTICLE IV

Each party shall deposit with the international bureau at the latest on March 1, 1916, the sum of 3,000 gulden of The Netherlands toward the costs of the arbitral procedure.

ARTICLE V

The court of arbitration shall meet at The Hague on June 15, 1916, and proceed immediately to examine the dispute.

ARTICLE VI

The parties may make use of the German or the English language.

The members of the court may use the German or the English language as they may choose. The decisions of the court shall be written in both languages.

ARTICLE VII

Each party shall be represented by a special agent whose duty shall be to act as an intermediary between the party and the court. These agents shall furnish the court any explanations which the court may

demand of them; they may submit any legal arguments which they may consider advisable for the defense of their case.

ARTICLE VIII

The stipulations of the convention of October 18, 1907, for the pacific settlement of international disputes, shall be applied to this arbitral procedure, in so far as nothing to the contrary is provided by the above *compromis*.

Done in duplicate at Berlin on the —— day of ——

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Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 27



OFFICIAL DOCUMENTS BEARING ON THE ARMED NEUTRALITY OF 1780 AND 1800

PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.

1917

Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 27

OFFICIAL DOCUMENTS BEARING ON THE ARMED NEUTRALITY OF 1780 AND 1800

PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.
1917

B 27724.

Prefatory Note

In President Wilson's address before Congress on February 26, 1917, after recounting the relations between Germany and the United States and the failure of diplomatic means to protect neutral rights, he stated that

"there may be no recourse but to *armed* neutrality, which we shall know how to maintain and for which there is abundant American precedent."

In addition to American precedent, which has already been instanced in pamphlets No. 24, *Documents relating to the Controversy over Neutral Rights between the United States and France, 1797-1800*, and No. 25, *Opinions of the Attorneys General and Judgments of the Supreme Court and of the Court of Claims of the United States relating to the Controversy over Neutral Rights between the United States and France, 1797-1800*, there is European precedent for armed neutrality; for in 1780 and in 1800 the leading neutral Powers of Europe entered into an agreement to protect their rights against belligerent invasion, by force of arms if necessary. The texts of the agreements constituting the armed neutrality of 1780 and of 1800, together with the orders putting them into effect and diplomatic correspondence bearing thereon, are reproduced in the present pamphlet.

The originals of most of these documents are in foreign languages. English translations, wherever available, have been used, and in other cases English translations have been made especially for the present occasion. As in the previous pamphlets, there is no expression of personal opinion, and the matter contained in the present pamphlet is issued in the interest and for the convenience of the public without seeking to influence the judgment which it may reach.

An extract from Henry Wheaton's *History of the Law of Nations*, dealing with subject of the armed neutrality, has been prefixed for the benefit of the reader as an introduction to the official document.

JAMES BROWN SCOTT,
Director of the Division of International Law.

WASHINGTON, D. C., February 28, 1917.

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OFFICIAL DOCUMENTS BEARING ON THE ARMED NEUTRALITY
OF 1780 AND 1800

Introduction¹

In the meantime Spain had been drawn into the war as an ally of France under the family compact of 1761, and Great Britain had demanded in vain from Holland that assistance which the republic was bound to render by the subsisting treaties of alliance and guarantee between the two countries. Indeed appearances indicated that Great Britain was soon to encounter an enemy in her ancient ally. Her naval, commercial, and colonial superiority were thus threatened by a formidable confederacy of the maritime Powers of Europe combined with the youthful energies of her own revolted colonies. In this extremity, the British Cabinet turned its attention to Russia, as a Power whose friendship and aid might be secured by the application of suitable means. Sir James Harris (afterwards Lord Malmsbury) was instructed to sound the disposition of the Empress Catharine, and for this purpose addressed himself to Panin, Chancellor of the Empire, and Potemkin, the reigning favorite of that princess. The former was unfavorable to the views of the British Cabinet; but the latter opened to their Ambassador the means of secret conference with the Empress, who consented to offer her armed mediation in the war between Great Britain on the one side, and France, Spain, and the United States on the other, as an equivalent for Russia's being allowed to prosecute her designs on the Turkish Empire. But the inclinations of the Empress were still resisted by Panin, who endeavored to convince her that the true interests of the Russian State would not be promoted by such an alliance; and an official answer was accordingly returned declining the British overtures. Harris was disconcerted by this unexpected result, but received assurances from Potemkin, in the name of the Empress, of unchanged good-will, and an expression of the hope that circumstances would soon enable her to conform her conduct to her wishes.

An incident now occurred which seemed to favor the designs of the British negotiator. Two Russian vessels laden with corn, and

¹From Henry Wheaton's *History of the Law of Nations in Europe and America from the Earliest Times to the Treaty of Washington, 1842*, (New York, 1845), pp. 295-304 and 397-421.

bound to the Mediterranean, were seized by Spanish cruisers upon the ground that they were intended to supply the fortress of Gibraltar. The Empress instantly demanded satisfaction from the Spanish Court, and was persuaded by Potemkin to order, without consulting Panin, the equipment of a fleet at Kronstadt, which was destined to cooperate with Great Britain against Spain and her allies, in case redress should be refused. The fitting out of the fleet could not long be concealed from Panin, nor did he doubt its destination. But he determined to carry into effect his own views by appearing to forward those of his rival. Far from appearing to oppose the designs of the Empress, he declared that he himself participated in her indignation at the conduct of Spain, and entirely approved of her determination to require satisfaction for the injury done to the neutral navigation of her subjects engaged in a lawful commerce. He would even go further; he would exhort his sovereign to seize this opportunity of solemnly announcing to Europe that she would not suffer the wars waged by other Powers to affect injuriously the accustomed trade of Russia. He represented that such a course would secure the friendship and cooperation of all the neutral Powers, and would compel Spain to grant complete satisfaction for the injury she had committed. The true principles of neutrality, sanctioned by the natural law of nations, had been hitherto too little respected in practice. They had hitherto wanted the support of a sovereign uniting sufficient power, wisdom, and benevolence to cause them to be respected. These requisites were now united in Catharine, and she had an opportunity of acquiring new titles to glory, of becoming a lawgiver to the high seas, of restraining the excesses of maritime warfare, and affording to the peaceful commerce of neutrals such a security as it never had possessed.

The Empress was completely carried away by these representations so flattering to her pride and ambition. She ordered Panin to prepare a statement of the principles he had developed, to be communicated to the belligerent Powers, as the rules to be observed for the security of Russian navigation and commerce, and to neutral States, as the basis of a league to be formed between them for the protection of neutral rights.¹

¹Von Dohm, *Denkwürdigkeiten meiner Zeit*, vol. ii, pp. 100-150; *Mémoire sur la Neutralité armée* par M. le Comte de Goertz, p. 104.

This account given by the Count de Goertz of the history of the armed neutrality is confirmed by what the Empress Maria Theresa said to Baron de Breteuil, Minister of France. "Il n'y a pas," lui-dit elle à l'occasion de la

In the declaration of the Empress of Russia, which was accordingly drawn up, under date of the 26th February, 1780, and communicated to the Courts of London, Versailles, and Madrid, these rules are laid down as follows:

1. That all neutral vessels may freely navigate from port to port and on the coasts of nations at war.

2. That the goods belonging to the subjects of the Powers at war shall be free in neutral vessels, except contraband articles.

3. That the Empress, as to the specification of the above-mentioned goods, holds to what is mentioned in the 10th and 11th articles of her treaty of commerce with Great Britain, extending these obligations to all the Powers at war.¹

4. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is, by the arrangements of the Power which attacks it with vessels; stationed sufficiently near, an evident danger in attempting to enter it.

Such was the origin of the first armed neutrality of 1780. It sprung from no enlarged and beneficent views of improvement in the maritime law of nations hitherto sanctioned by general practice. It was the accidental result of a mere court intrigue, and of the rivalry between two candidates for the favor of a dissolute, ambitious, and vain-glorious woman. Catharine herself had a very imperfect idea of the immense importance of the measure she had adopted and of the effects it might produce. So ignorant was she of commerce, that she flattered herself with having at once vindicated her own honor and shown her strong regard for Great Britain. Panin took care not to

neutralité armée; "il n'y a pas jusqu'à ses vues les plus mal combinées, qui ne tournent à son profit et à sa gloire; car vous savez sans doute que la déclaration, qu'elle vient de faire pour sa neutralité maritime, avait d'abord été arrêtée dans des termes et dans des vues absolument favorables à l'Angleterre. Cet ouvrage avait été fait par la seule influence de M. le Prince Potemkin, et à l'insu de M. le Comte de Panin; et cette déclaration, inspirée par l'Angleterre, était au moment de paraître, lorsque M. de Panin, qui en a été instruit, a trouvé moyen de la faire entièrement changer et de la tourner absolument en votre faveur." Flassan, *Histoire de la Diplomatie Française*, vol. vii, p. 272n.

¹The treaty of amity and commerce of 1766 between Great Britain and Russia, Article 10, restricts contraband to "munitions of war"; and the 11th article defines these to consist of "canons, mortiers, armes à feu, pistolets, grenades, boulets, balles, fusils, pierres-à-feu, mèches, poudre, salpêtre, souffre, cuirasses, piques, épées, ceinturons, poches à cartouche, selles et brides, au delà de la quantité qui peut être nécessaire pour l'usage du vaisseau," etc. Martens, *Recueil de Traités*, vol. 1, p. 395.

undecieve her and, fearing that his intrigue might fail, begged she would not communicate with any one until the couriers were sent off with the declaration. But she could not refrain from saying confidentially to the British Ambassador that there would soon be delivered in her name to all the belligerent Powers a manifesto which would be completely satisfactory to the British Government; and condescended even to give him leave to communicate thus much to his Court. The communication which he accordingly made raised its expectations to the highest pitch, and the disappointment was proportionably greater when it learnt the true nature of the measures adopted by the Russian Cabinet.

The British Government dissembled its resentment, and replied to the Russian declaration with cold dignity, that His Majesty had hitherto acted towards neutral Powers "conformably to the clearest principles generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeably to the tenor of his different engagements with other Powers, where those engagements have altered this primitive law by mutual stipulations proportioned to the will and convenience of the contracting Parties," and that "strongly attached to Her Majesty the Empress of all the Russias by the ties of reciprocal friendship and common interest, the King, from the commencement of those troubles, gave the most precise orders respecting the flag of Her Imperial Majesty and the commerce of her subjects, agreeably to the law of nations, and the tenor of the engagements stipulated by his treaty of commerce with her, and to which he shall adhere with the most scrupulous exactness.

The Court of Spain answered the Russian declaration by professing its determination to respect the neutral flag of all the Powers that had consented, or should consent to defend it, until His Catholic Majesty ascertained what part Great Britain should take, and whether its navy and privateers would keep within due bounds. And to show to all the neutral Powers how much Spain was desirous of observing, in time of war, the same rules of which she had claimed the observance whilst neutral, His Majesty conformed to those laid down by Russia, "with the understanding however that with regard to the blockade of Gibraltar, *the danger of entering* subsists as determined by the 4th article of the said declaration."

The Court of France answered, that the principles laid down by Russia were no other than the rules already prescribed to the French

navy, the execution of which was maintained with an exactness known and applauded by all Europe. "The freedom of neutral vessels, restrained in a few cases only, is a direct consequence of natural law, the security of nations, and the consolation even of those who are afflicted by the scourge of war. The King has therefore been desirous to procure, not only to the subjects of Her Majesty the Empress of Russia, but to all other States which continue neutral, the freedom of navigation on the same conditions with those announced in the declaration, to which His Majesty this day replies. The King believed that he had already advanced the general good, and prepared a glorious epoch of his reign, in establishing by his example those rights which every belligerent ought and must recognize as belonging to neutral vessels. This hope has not been vain, since the Empress, whilst engaging to observe the most exact neutrality, has declared in favor of that system which the King sustains at the price of the blood of his people, whilst she claims the same laws which His Majesty would make the basis of the universal maritime code."

Denmark and Sweden concurred in approving the principles of the Russian declaration, and notified their concurrence to the belligerent Powers.

Great Britain answered to the Danish notification, that during the whole course of the present war with France and Spain, she had constantly respected the rights of all friendly and neutral Powers, according to subsisting treaties, and according to the clearest and most generally recognized principles of the law of nations common to all nations who are bound by no special conventions. Such conventions existed between Great Britain and Denmark, and the Danish flag and commerce would continue to be respected according to their stipulations, which defined the mutual rights and duties of the two nations and which could not be changed without their mutual consent. Until thus changed, they constituted an inviolable law for both parties, which had been observed and would continue to be observed by the British Government with that spirit of equity which regulated all its conduct, and in the just expectation of reciprocal fidelity on the part of Denmark to its engagements.

To the notification of Sweden the British Cabinet answered in a similar manner, with a special reference to the stipulations of the existing treaties between the two countries, which were clear and formal, and could not be changed without the mutual consent of the contract-

ing Parties. As such, they would be observed by Great Britain, as a sacred and inviolable law.¹

Denmark and Russia concluded at Copenhagen on the 9th July, 1780, the convention of armed neutrality for the maintenance of those principles by the equipment of a joint fleet, and for their mutual defense against any Power who should attack either of the contracting Parties on account of their reciprocal engagements. By this convention, to which Sweden acceded on the 9th September, 1780, the Baltic sea was declared to be *mare clausum* against the ships of war of the belligerent Powers; and the contracting Parties referred to their respective treaties with the belligerent Powers for the definition of contraband.

In the meantime a diplomatic struggle was going on in the United Provinces between the agents of France and Great Britain, the former seeking to confirm the republic in her resolution of remaining neutral, and the latter insisting on her furnishing the succors stipulated by the existing treaties of alliance and guarantee. In order to determine the conduct of the Dutch, the French Government issued, on the 14th of January, 1779, an ordinance suspending the operation of the first article, that of the 26th July, 1778, in respect to their navigation, excepting that of Amsterdam. The operation of this ordinance was again suspended as respected the entire province of *Holland* on the 2d of July, 1779, which still continued to be privileged under the former ordinance of 1778. France thus sought to divide the councils of the republic, whilst the British Court notified the States-General that, if they did not, within the term of three weeks, furnish the stipulated succors, Great Britain would no longer consider their flag as privileged by treaty, but would conduct [itself], in respect to it, according to the strict principles of the preexisting law of nations. This menace was executed by the proclamation of the 17th April, 1780, which author-

¹"Le 12 article du traité de 1661 réglant la forme du certificat dont les vaisseaux doivent être munis, en donne cette raison :

Ne vero libera ejusmodi navigatio aut transitus foederati unius ejusque subditorum ac incolarum, durante bello alterius foederati, terra marive cum aliis gentibus fraudi sit alteri confoederato, mercesque et bona hostilia occultari possint.

"Le même article contient une stipulation précise et formelle. La voici : Si hostis bona in confoederati navigio reperiantur, quod ad hostem pertinet, praedae solum modo cedat, quod vero ad confoederatum illico restituitur.

"Le traité de 1666 prescrit le même certificat, et en donne les mêmes raisons." Martens, *Recueil de Traités*, vol. 3, p. 188.

ized the seizure of Dutch vessels, bound from one enemy's port to another, or laden with enemies' property. Whilst thus agitated by alternate hopes and fears, the States-General were invited by Russia to accede to the convention of armed neutrality which had been formed by the Baltic Powers. After long delays and hesitation, the resolution for this purpose was, at length, passed on the 20th November, 1780; but it was even then not unanimous, the three provinces of Zealand, Guelders, and Utrecht, having refused their assent. This was followed on the 20th December, 1780, by a declaration of war against the United Provinces on the part of Great Britain, grounded upon the alleged fact of their having concluded a secret treaty acknowledging the independence of the United States of America. The United Provinces demanded from the northern Powers the succors stipulated by the convention of armed neutrality; but this demand was rejected, upon the ground that the rupture between Great Britain and Holland, had actually taken place before the accession of the latter to the armed neutrality, and that the causes of war, stated in the British declaration, were entirely foreign to the objects of the neutral alliance.

The United States of America acceded to the principles of the armed neutrality by the ordinance of Congress of the 7th April, 1781.

Prussia acceded to the armed neutrality on the 8th May, 1781.

Austria acceded to the principles of the armed neutrality, but not to the conventions by which it was formed, on the 9th October, 1781.

Portugal acceded to the conventions on the 13th July, 1782.

The King of the Two Sicilies acceded to the conventions on the 10th February, 1783.

The armed neutrality of the northern Powers continued to hang as a dark cloud constantly menacing the safety of the British Empire until the peace of 1783. Being engaged in war with France, Spain, Holland; and the United States of America, the addition of the hostility of those Powers might have turned the already doubtful balance against her naval superiority. It was with this view, and also to detach Holland from the confederacy, that Great Britain offered, in 1782, to make a separate peace with the republic, under the mediation of Russia, on the basis of the treaty of 1674, by which, as Mr. Fox, then Secretary of State for Foreign Affairs, stated in his communication to the Russian Minister in London, "the principles of the armed neutrality are established in their widest extent to all the contracting

Parties. His Majesty, therefore, does not make any difficulty to say, that he will accept, as the basis of a separate peace between him and the States-General, a free navigation, according to the principles demanded by Her Imperial Majesty in her declaration of the 26th February, 1780."

This negotiation proved abortive, and Great Britain continued to act towards the Powers which remained neutral during the American war, according to the preexisting law of nations, as understood and practiced by her. She, however, asserted her maritime pretensions with much forbearance and caution, and suffered the rule she had established in the war of 1756, relating to the enemy's colonial trade, to slumber in oblivion.¹

Whilst this negotiation² was going on, the Emperor of Russia, who had separated himself, first from the alliance of Austria, and subsequently from that of Great Britain, proposed to the Courts of Denmark, Prussia, and Sweden, to conclude a convention for the revival of the principles of the armed neutrality of 1780. This proposition was grounded principally upon the necessity of concerting on the part of the northern Powers measures of defense against aggressions similar to that which it was alleged had been committed on the Danish frigate *Freya*; and the Emperor Paul no sooner heard of the arrival of a British fleet in the Sound, than he ordered a sequestration to be placed upon all British property in the Russian ports. The signature of the convention of the 29th August, between Denmark and Great Britain, induced him to retract this measure. But the refusal of the British Government to deliver to him the possession of the island of Malta, which he claimed under an alleged agreement with that Government, induced him to lay an embargo on all British vessels. Three treaties were signed at St. Petersburg on the 16th December, between Russia and Sweden and between Russia and Prussia, and on the 18th between Russia and Prussia; and as each of these Powers acceded to the treaties of the others with Russia, they formed together a sort of quadruple alliance.

¹Here follows a history of the period extending to the year 1800.

²i. e., the negotiation between Great Britain and Denmark terminated by the convention of Copenhagen of August 29, 1800, by which it was agreed that the Danish Government should suspend the granting of convoy until the question of right should be settled by a definitive convention.

By the first article of these treaties, the contracting Parties agreed to prohibit to their subjects all trade in contraband of war with any of the belligerent Powers.

The second article confined the list of contraband to military stores, as stipulated in the armed neutrality of 1780 by reference to the treaty of 1766 between Great Britain and Russia. But it was provided that this stipulation should be without prejudice to the particular stipulations in anterior treaties with the belligerent Parties, by which objects of a similar kind are reserved, prohibited, or permitted.

The third article provided, that the list of contraband articles, being thus determined and excluded from neutral commerce, the contracting Parties had resolved that all other trade should remain perfectly free. It was further declared, by the same article, that in order to provide a sufficient security for the general principles of natural law, of which the freedom of commerce and navigation and the rights of neutral nations are a direct consequence, they had determined no longer to suffer them to depend upon arbitrary interpretation suggested by isolated and temporary interests. With this view they had agreed:

1. That every vessel may navigate freely, from port to port, and on the coasts of nations at war.

2. That the goods belonging to the subjects of the Powers at war shall be free in neutral vessels, except contraband articles.

3. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is, by the arrangement of the Power which attacks it with vessels, stationed sufficiently near so that there is an evident danger in attempting to enter it; and that any vessel, sailing towards a blockaded port, should not be considered as contravening the convention, unless, after having been notified by the commander of the blockading force of the existence of the blockade, she should still endeavor to enter the blockaded port by means of force or fraud.

4. That neutral vessels shall only be detained for just cause and evident facts, that they shall be adjudged without delay, that the procedure shall be always uniform, prompt, and legal; and that in every case, besides the damages awarded to the injured parties, complete satisfaction shall be given for the insult to the national flag.

5. That the declaration of the officers, commanding the public ships which shall accompany the convoy of one or more merchant vessels, that the ships of his convoy have no contraband articles on board,

shall be deemed sufficient to prevent any search on board the convoying vessels or those under convoy.

The remaining articles provided for a joint armament to protect the neutral commerce of the subjects of the contracting Parties, and for an eventual alliance, in case either of them should be attacked on account of these engagements.

The Danish Government, at first, hesitated to ratify the treaty which had been signed by their Ministers at St. Petersburg. It was already bound by the convention of Copenhagen to Great Britain not to grant convoys to its merchant vessels until the question should be finally determined between the two Powers. An unconditional accession to the treaties of armed neutrality would seem to be a violation of its previous engagements with Great Britain. In the meantime, the British Minister at Copenhagen, by his note dated the 27th December, had demanded a clear, frank, and satisfactory answer upon the nature, objects, and extent of the obligations Denmark might have contracted, or the negotiations she was still pursuing with the other northern Powers. Count Bernstorff, in his reply to this note, of the 31st December, denied that the engagements his Government was upon the point of contracting were hostile to Great Britain, or inconsistent with the previous convention of the 29th August. He asserted, that a conditional and temporary suspension of the exercise of a right could not be considered as an abandonment of the right which was incontestable, and for the maintenance of which the northern Powers were about to provide by a mutual concert, which far from compromising their neutrality, was intended to confirm it.

The British Government replied to this note by an order in council, dated the 14th of January, 1801, laying an embargo on all Russian, Swedish, and Danish vessels. Lord Grenville notified this order to the Ministers of Denmark and Sweden, declaring that the new maritime code of 1780, now sought to be revived, was an innovation highly injurious to the dearest interests of Great Britain, and which Russia herself had renounced by the engagements contracted between her and Great Britain at the commencement of the then present war.

These measures decided Denmark to adhere unconditionally to the armed neutrality by a declaration published on the 27th February, 1801.

Great Britain continued to temporize, from motives of policy, with Prussia, the remaining party to the northern alliance. This did not

however prevent the Prussian Cabinet from cooperating with Denmark in shutting the mouths of the Elbe and the Weser, against British commerce. The Danish troops occupied Hamburg and Lubeck, whilst Hanover and Bremen were seized by Prussia. In the meantime, the war commenced between the Baltic Powers and Great Britain by the battle of Copenhagen, April 2, 1801, the result of which produced an armistice with Denmark. The death of the Emperor Paul dissolved the confederacy which had been formed under his auspices. The armistice with Denmark was extended to Russia and Sweden and the Hanseatic towns were evacuated by the Danish and Prussian troops. The embargoes were raised on both sides, and a negotiation opened at St. Petersburg for regulating the points in controversy.

This negotiation resulted in the signature of a convention between Great Britain and Russia on the 5th/17th of June, 1801, the preamble of which stated that:

[Here follows the text of the treaty.]

The Court of Copenhagen acceded to this convention, on the 23d October, 1801, and that of Sweden, on the 18/30th March, 1802. The list of contraband inserted in the convention differed from that contained in the 11th article of the treaty of 1661 between Great Britain and Sweden, whilst the convention reserved the special stipulations of the contracting Parties with other Powers relating to contraband. In order to prevent a recurrence of the differences which had arisen relative to the 11th article of the treaty of 1661, a convention was signed at London on the 25th July, 1803, between Great Britain and Sweden, by which the list of contraband contained in the convention of 1801 was augmented with the addition of the articles of coined money, horses, and the necessary equipments of cavalry, ships of war, and all manufactured articles serving immediately for their equipment, all which articles were subjected to confiscation. It was further stipulated, that all naval stores, the produce of either country, should be subject to the right of preemption by the belligerent, upon condition of paying an indemnity of ten per centum upon the invoice price, or current value, with demurrage and expenses. If bound to a neutral port, and detained upon suspicion of being bound to an enemy's port, the vessels were to receive an indemnity, unless the belligerent Government chose to exercise the right of preemption; in which case, the owners were to be entitled to receive the price

which the goods would have sold for at their destined port, with demurrage and expenses.¹

We have thought it necessary to dwell thus minutely upon the circumstances which attended the formation of the convention of 1801, because it may justly be considered, not merely as forming a new conventional law between the contracting Parties, but as containing a recognition of universal preexisting rights, which could not justly be withheld by them from other States. The avowed object of the treaty was to fix and declare the law of nations upon the several points which had been so much contested; the three northern Powers yielding the point of *free ships, free goods*, and that of search subject to a modification, by which the exercise of the right was confined to public ships of war; and Great Britain yielding to all of them those relating to the colonial and coasting trade, to blockades, and to the mode of search; and yielding to Russia, moreover, the limitation of contraband to military stores. With respect to the question of convoys, a question not comprehended in the armed neutrality of 1780, a modification, satisfactory to the northern Powers, was yielded by Great Britain.

That this is the true interpretation of the convention of 1801, was made evident in the course of the debate, which took place in the British House of Lords on the 12th of November, 1801, on the production of the papers relating to that convention.

On this occasion Lord Grenville, who, together with his friend Mr. Pitt, had retired from the Ministry, leaving their successors to make peace with France and the northern Powers, declared his full conviction that the convention essentially impaired the system of maritime law which had been upheld by the British Government. He stated that the inadmissible pretensions of the Baltic Powers had been countenanced by the weak and temporizing policy, which Great Britain had pursued towards them, in the last years of the war of the American revolution. At the commencement of the war of the French revolution, she had indeed obtained, by negotiation with all the principal Governments of Europe, a renunciation of claims, which had never been advanced but with purposes hostile to her. The principles in question were, indeed, within a few years after the armed neutrality of 1780, renounced by almost every State which had been a party

¹Schoell, *Histoire des Traités de Paix*, vol. vi, pp. 60-105: Martens, *Recueil de Traités*, vol. 7, pp. 150-281, vol. 8, p. 91.

to that league;¹ and in some of the official communications with the Baltic Powers, during the war with France, pretensions were advanced, both by the Empress Catharine and her successor, which went to the full extent of the ancient maritime law of Europe.² The effects of this change of sentiment ensured to Great Britain, for several years, the undisturbed exercise of her maritime rights in those quarters where they were the most important, both to her own interests, and to those of the common cause in which she was engaged. But when caprice and groundless disgust were suffered to interrupt this well-considered system of policy at Petersburg, the former pretensions of the neutral Powers were soon renewed with increased hostility; and it last became manifest, upon the signature of the convention of armed neutrality of 1800, that unless Great Britain could then resolve to meet the necessity of the case, by bringing these questions to a distinct and final settlement, they would always be found to impede her operations, and embarrass her exertions in every future period of difficulty or danger.

The principal objection stated by Lord Grenville to the convention of 1801 was, that in the form and wording of its different articles, the two hostile conventions of armed neutrality had been followed, with a scrupulous and servile exactness, wherever they could be made to apply. Great Britain had, therefore, negotiated and concluded that treaty on the basis of the very same inadmissible conventions, which she actually went to war for the purpose of annulling. And she then stood in the face of Europe, no longer as resisting, but as acceding to the treaties of armed neutrality, with modifications indeed, and changes in some important points, but sanctioning, by that concession, the general weight and authority of transactions which she had before considered as gross violations of public law, as manifest indications of hostile purpose, and as sufficient grounds to justify, on her part, the extremities of war itself. Whatever principles of maritime law might thereafter be contested, they must be discussed with some regard

¹By Russia, in her war with Turkey in 1787; by Sweden, in her war with Russia in 1789; by Russia, Prussia, Austria, Spain, Portugal and America, in their treaties with Great Britain during the first war of the French revolution; by Denmark and Sweden, in their instructions issued in 1793, when neutral; and in their treaty with each other in 1794; and by Prussia again in her treaty with America of 1799. (Note by Lord Grenville.)

²See Russian declaration to Sweden, July 30, 1793. Instructions to Admiral Tchatchagoff, July 24, 1793. See also Russian treaty of commerce 1797 with Great Britain, Article 10.

to the treaties of armed neutrality. Whatever words of doubtful interpretation were transferred from those treaties into the convention (and many such were transferred) must, according to one of the best rules of legitimate construction, be explained by a reference to the original instrument, where they were first introduced into the code of public law.

It was, therefore, under this impression that they must proceed to examine the convention of 1801, and to compare it with those claims, for which Great Britain determined, at the commencement of the year, that it was necessary, even under all the difficulties of that moment, to incur the additional dangers of a northern war. Those claims were included in five separate propositions or principles of maritime law, every one of which the neutral league of 1800, had bound the contracting parties in that engagement to resist by force: and every one of which their Lordships had agreed with the Ministry of that day, in considering as essentially necessary to be maintained for the preservation of the maritime strength of Great Britain, and, consequently for the means even of her domestic security.

The propositions were as follows:

1. That it is not lawful to neutral nations to carry on, in time of war, for the advantage, or on the behalf of one of the belligerent Powers, those branches of its commerce, from which they are excluded in time of peace.

2. That every belligerent Power may capture the property of its enemies, wherever it shall be met with on the high seas, and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.

3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent Powers, the law of nations (if not restrained by special treaty), includes all naval as well as all military stores; and generally all articles serving principally, according to the circumstances of the war, to afford to one belligerent Power the instruments and means of annoyance to be used against the other.

4. That it is lawful to naval Powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons, *bona fide* allotted to that service, and fairly competent to its execution. That such blockade is valid and legitimate, although there be no design to attack or to reduce by force the port, fort, or arsenal to which it is applied.

And that the fact of the blockade, coupled with due notice thereof to the neutral Powers, shall affect, not only vessels actually intercepted in the attempt to enter the blockaded port, but those ships also, which shall elsewhere be met with, and shall be found to have been destined to such port, under the circumstances of the fact and notice of its blockade.

5. That the right of visiting and examining neutral vessels is a necessary consequence of these principles; and that by the law of nations (when unrestrained by treaty) this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships, either of its own nation or of any other country.

The first of these principles established the rule under which the belligerent refuses to neutrals the liberty of carrying on, during war, those parts of his enemy's trade from which they are usually excluded in time of peace. This rule had, in the British practice, been principally applied to the coasting and colonial trade of France. From both these branches of her trade, France had, in every period of peace, excluded all vessels but her own, with occasional exceptions only, such as more strongly proved her general principle of exclusion. But in war she had always found it impossible to maintain these monopolies. Pressed, on the one hand, by the naval superiority of Great Britain, which had rendered the navigation of French ships unsafe, and unable, on the other hand, to forego the resources which depend entirely on these important branches of her commerce, France had frequently endeavored, under these special circumstances, to open both her colonial and her coasting trade to neutral vessels. The right to carry on unmolested both these branches of commerce was claimed by the northern Powers in the league of armed neutrality of 1780 and of 1800. The claim, which the confederates thus asserted, was, so far as related directly to the coasting trade, expressed in the 3d article of the convention of 1800 as follows: "That neutral ships may navigate freely from port to port, and on the coasts of the belligerent Powers." The convention of 1801 had adopted very nearly the same expressions. By the first section, of what there, also, stood as the third article, neutral ships are permitted "to navigate freely to the ports and upon the coasts of the belligerent Powers." And in the next section of the same article, corresponding also (though with a variation respecting enemy's property) with a clause in the treaty of

armed neutrality of 1800, it was expressly declared, that "the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property." A free navigation to the ports, and upon the coasts, of any country, must imply the liberty of navigating freely, both to and from all those ports, and upon every part of those coasts. If any limitation of this liberty had been intended, it would have been stated in the exceptions, specified in the convention, to the otherwise unrestrained freedom of navigation to the enemy's ports, which neutrals were thenceforward to enjoy. Among the exceptions thus specified, not even the most distant reference is to be found to that principle respecting the coasting trade which Great Britain had asserted. The liberty of sailing freely to any hostile port was plainly conceded; but it was not even intimated, much less declared, that this permission was not to extend to ships laden with commodities purchased at any other port of the same country. Nor would it be easy to explain in any other sense than that of a deliberate and intentional concession of the coasting trade, the admission of those words which guarantee to neutrals the free navigation, not only to the ports, but "upon the coasts of the Powers at war." If a direct trade only from the neutral country to the belligerent ports had been intended, the first words of the section had amply secured it. If it was meant to permit a partial and successive discharge of the different articles of the cargo, at different ports, this also was secured by the general and unqualified permission to sail freely to those ports. The words "upon the coasts" were first introduced into the treaty of armed neutrality in 1780. They were there employed for the express purpose of asserting the right of neutrals to carry on the coasting trade of the belligerents. From that treaty they had since been carefully transcribed, first into the hostile convention of 1800, and now again into the conciliatory arrangement of 1801, to which they were thenceforth to look for the rule of maritime law.

But even supposing the sense of the convention of 1801 was ambiguous, as to the coasting trade, there could be no doubt that it had surrendered to neutrals the right to carry on the enemy's colonial trade. The only relaxation which had been allowed by Great Britain, during the war with France, of the principle asserted by her, was that contained in the order in council of January 8, 1794 the effect of which was to permit neutral vessels to carry to the ports of the United States the produce of the French colonies. In other respects, the pre-

vious order of the 6th November, 1793 still remained in full force, unless it were annulled by the convention of 1801. The second section of the third article of this treaty distinctly provided, that all "the effects embarked on board neutral ships shall be free, with the exception of contraband of war and enemy's property; and it is agreed not to comprise in the number of the latter, the merchandise of the produce, growth, or manufacture of countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account; which merchandise can not be excepted, in any case, from the freedom granted to the flag of the said Power." It was impossible to apply these words to any other case than that of the trade in the produce of the French colonies, become the property of neutrals, which was declared to be free in neutral vessels, whatever might be the destination, whether to a neutral country or even to France itself.¹

As to the British claim, in respect to the liability to capture and confiscation of enemy's property, found on board of neutral vessels, Lord Grenville admitted that it was fully recognized by the second section of the third article of the convention, which implied a relinquishment of the opposite principle of *free ships, free goods* on the part of the northern Powers.

The stipulation in the third section of the same article, relating to contraband of war, must be considered in connection with the second *separate* article of the convention, by which the treaty of commerce of the 10/21 February, 1797, was "confirmed anew, and all its stipulations repeated to be maintained in their whole extent." The effect of this article was to reestablish the treaty of 1797, which had, by a temporary stipulation, admitted the subjects of the Russian Empire to carry, in their own ships, naval stores to the enemy's ports. The treaty itself would soon expire, but the privilege it granted to

¹It should be observed that the right to carry on the colonial trade granted by this article was subsequently limited by the explanatory declaration, which had already been signed at Moscow at the time when Lord Grenville was speaking, though unknown to him, by which it was agreed that "the freedom of commerce and navigation, granted by the said article to the subjects of a neutral Power, does not authorize them to carry, in time of war, the produce or merchandise of the colonies of the belligerent Power, direct to the continental possessions, nor *vice versa*, from the mother country to the enemy's colonies; but that the said subjects are, however, to enjoy the same advantages and facilities in this commerce as are enjoyed by the most favored nation. and especially by the United States of America." Martens, *Recueil de Traités*, vol. 7, p. 271.

Russia of carrying naval stores would not expire with it. The article which contained that stipulation had been separated from all commercial stipulations, and transferred from the temporary treaty of 1797 into the convention of 1801, which was expressly declared to be perpetual.¹ The third and fourth sections of this article, which treat of contraband and of blockaded ports, did each of them expressly contain, not the concession of any special privilege to be thenceforth enjoyed by the contracting Parties only, but the recognition of an universal and preexisting right, which, as such, could not justly be refused to any other independent State. The third section, relating to contraband of war, was, in all its parts strictly declaratory. It was introduced by a separate preamble, announcing that its object was to prevent "all ambiguity or misunderstanding as to what ought to be considered as contraband of war." Conformably with this intention, the contracting Parties declared, in the body of the clause, what were the only commodities which they acknowledge as such. And this declaration was followed by a special reserve, that "it shall not prejudice their particular treaties with other Powers."

If the parties had intended to treat of this question only as it related to their own conduct towards each other, and to leave it, in that respect, on the same footing on which it stood before the formation of the hostile league of 1800, all mention of contraband in that part of the convention would evidently have been superfluous. Nothing more could, in that case, be necessary than to renew the former treaties which had specified the lists of contraband; and as that renewal was expressly stipulated in another article of the convention, the third section must be considered as introduced for some distinct purpose. It must therefore unquestionably be understood in that larger sense announced in its preamble, and expressed in the words of the declaration which it contained. It must be taken as laying down a general rule for all future discussions with any Power whatever, on the subject of military or naval stores, and as establishing a principle of law which was to decide universally on a just interpretation of the technical term of contraband of war. The reservation, made in the conclusion of the section, of special treaties with other Powers, was manifestly in-

¹"Article 8. The principles and measures adopted by the present act shall be alike applicable to all the maritime wars in which one of the two Powers may be engaged whilst the other remains neutral. These stipulations shall consequently be regarded as permanent, and shall serve for a constant rule to the contracting Powers in matters of commerce and navigation."

consistent with any more limited construction. It was unnecessary to declare that a stipulation, extending only to the Baltic Powers, should not prejudice the subsisting treaties of Great Britain with other nations. But the reserve was not only prudent, but necessary, when she undertook to lay down a universal principle, applicable to all her transactions with every independent State. In recognizing a claim of preexisting right, and in establishing a new interpretation of the law of nations, it was unquestionably of extreme importance expressly to reserve the more favorable practice which her subsisting treaties had established with some other Powers.

The interpretation given to the term contraband of war in the convention was drawn exclusively from the treaties of armed neutrality. In the league of 1780, the Empress of Russia had thought proper to declare that her engagements with Great Britain on the subject of contraband should thenceforth be considered as the invariable rule of natural and universal right. The convention of 1801 adopted the same rule, and adopted it on the same ground; enumerating all the commodities mentioned in the treaty of 1797 between Great Britain and Russia; declaring, that conformably to that treaty, the two sovereigns acknowledge those commodities alone as contraband of war. Great Britain must, in all future discussions with other neutral Powers, abide the consequences of that new rule of public law which she had herself thought proper to proclaim. She had publicly deserted her former claim, had confessed that naval stores ought not to be considered as contraband of war, and that she herself no longer acknowledged them as such. She had expressed this avowal in the very words originally intended for the purpose of making it universal; and had inserted it in her treaties with those very Powers who had confederated for no other object than to enforce her observance of it.

The stipulation on the subject of blockaded ports was also transcribed, with the variation of a single word, from the corresponding articles of the two conventions of armed neutrality. Those articles had declared, in substance, that no port should be considered as blockaded unless where the Power attacking it should maintain a squadron constantly stationed before it, and sufficiently near to create an evident danger of entering. In the convention of 1801, instead of the words, "*and sufficiently near,*" the contracting parties had substituted, "*or sufficiently near.*" And he had not the smallest doubt that by this minute

change, trifling and unimportant as it was, they intended to establish, in their full extent, the principles which Great Britain had maintained on this great question of maritime blockade, and which the article, in its original state, as it stood in the two neutral conventions was intended completely to subvert. But what he complained of, was the glaring impolicy of resting so important a principle on the minute and scarcely perceptible variation of a single article. He stated, however, two other objections to the article:

1. That when it spoke of the Power which attacks the port, it seems, in some degree, to countenance the unfounded assertion that a blockade by sea, like that by land, required an actual design of reducing or conquering the particular place to which it was applied. Whereas Great Britain maintained in her naval wars with France, as Holland formerly maintained in her contest with Spain, that the blockade of one or more of the enemy's ports, or even of a considerable extent of his coasts, may lawfully be adopted for the special purpose of intercepting his supplies, in order, by this pressure, to reduce him to just and reasonable conditions of peace.

2. The second objection arose from the very nature of all naval operations, depending so much on the variations of weather, by which a squadron blockading a hostile port, and fully equal to the execution of that service, might, nevertheless, occasionally be unable to remain either stationary before the port, or even sufficiently near it to create at all times an evident danger of entering. And if, as the words of the article imported, the blockade was understood to continue so long only as that danger actually existed, and was on the other hand to be considered as being raised as often as the danger ceased, even if for the shortest interval, the utmost confusion must inevitably arise in all cases, but particularly in those of neutral ships met with at a distance from the blockaded port, but destined to it. It might indeed be asserted, without the least exaggeration, that even giving the fullest weight to that minute verbal change, on which so much was made to depend, a strict adherence to the letter of that stipulation must utterly destroy the whole British system of blockade by cruising squadrons.

Lord Grenville then proceeded to consider the stipulations of the convention as it respects the visiting and examining neutral vessels under convoy. The claim of the neutral league of 1800 confined this examination to a bare perusal of the papers of the neutral ships, which papers were, for that purpose, to be communicated to the belligerent

by the neutral officer on board his own vessel. Exactly the same proceeding had been stipulated in the convention of 1801, and it was added, in both treaties, that if the papers so communicated should be found to be regular, no further search should take place. An exception, however, was subjoined in that of 1801, which constituted the only practical difference on the subject between the two conventions. It was not, as before, laid down absolutely, that no further search should, in any case, take place, but that none should take place "unless some valid motive of suspicion shall exist." Good faith forbade its being contended that the right, from which the belligerent had agreed to abstain, except when some valid ground of suspicion should exist, might still be indiscriminately exercised at his discretion. As the practice had before stood, the inquiry into the facts of the case preceded all conclusions to be drawn from them. The suspicion arose from the search, and the detention of the ship was its just and natural effect. As the law would stand under the convention, suspicion must precede inquiry, and very few cases were likely to occur, where any valid ground of suspicion respecting a neutral ship could *bona fide* exist before the search. It was then but too manifest that, while they had, in words, established the right of visiting ships under neutral convoy, they had, in fact, so limited and circumscribed the practice, as utterly to renounce every beneficial purpose to which it could, by any possibility, be applied.¹

In order to complete our view of the controversy growing out of the armed neutrality, it is only necessary to add that both in the preliminary treaty of peace between France and Great Britain signed in 1801, and in the definitive treaty concluded at Amiens in the following year, a total silence was observed respecting the disputed points of maritime law. On the rupture which took place between Great Britain and Russia in consequence of the attack upon Copenhagen and capture of the Danish fleet, the Russian Government published on the 26th October, 1807, a declaration forever annulling the maritime convention of 1801, and proclaiming "anew the principles of the armed neutrality, that monument of the wisdom of the Empress Catharine and engaging never to derogate from this system.

The British Government published, on the 18th December, an answer

¹Speech delivered by Lord Grenville in the House of Lords, Nov. 13, 1801, *Parliamentary History of England*, vol. xxxvi, pp. 200-255. For the very lame and inconclusive replies made by other speakers, see *ibid.*, pp. 256-263.

to this declaration proclaiming "anew the principles of maritime law, against which was directed the armed neutrality under the auspices of the Empress Catharine."

It was stated that these principles had been recognized by all the Powers of Europe who framed that league, and no one more strictly conformed to them than Russia herself under the reign of the Empress Catharine. It was the right, as well as the duty of His Majesty to maintain these principles, which he was determined to do against every confederacy with the assistance of divine Providence. The subsequent treaties of peace and of commerce between the two Powers are totally silent upon the disputed points.¹

The treaties of peace signed at Paris in 1814-15, between France and the allied Powers, are equally silent upon the contested questions of maritime law.

¹Martens, *Manuel diplomatique sur les Droits des Neutres sur Mer*, p. 69. The questions involved in the controversy, respecting the armed neutrality, became the subject of polemic discussion by various public jurists, both in belligerent and neutral countries. Among these works one of the most remarkable was the examination of the judgment of Sir W. Scott in the case of the Swedish convoy by Professor J. F. W. Schlegel published at Copenhagen in 1800. It was replied to by Dr. Croke in his remarks upon Mr. Schlegel's work upon the visitation of neutral vessels under convoy, London, 1801.

**Declaration of the Empress of Russia regarding the Principles of
Armed Neutrality, addressed to the Courts of London, Ver-
sailles and Madrid, February 28, 1780¹**

The Empress of all the Russias has so fully manifested her sentiments of equity and moderation, and has given such evident proofs, during the course of the war that she supported against the Ottoman Porte, of the regard she has for the rights of neutrality and the liberty of universal commerce, as all Europe can witness. This conduct, as well as the principles of impartiality that she has displayed during the present war, justly inspires her with the fullest confidence, that her subjects would peaceably enjoy the fruits of their industry and the advantages belonging to a neutral nation. Experience has nevertheless proved the contrary. Neither the above-mentioned considerations, nor the regard to the rights of nations, have prevented the subjects of Her Imperial Majesty from being often molested in their navigation, and stopped in their operations, by those of the belligerent Powers.

These hindrances to the liberty of trade in general, and to that of Russia in particular, are of a nature to excite the attention of all neutral nations. The Empress finds herself obliged therefore to free it by all the means compatible with her dignity and the well-being of her subjects; but, before she puts this into execution, and with a sincere intention to prevent any future infringements, she thought it but just to publish to all Europe the principles she means to follow, which are the most proper to prevent any misunderstanding, or any occurrences that may occasion it. Her Imperial Majesty does it with the more confidence, as she finds these principles coincident with the primitive right of nations which every people may reclaim, and which the belligerent Powers can not invalidate without violating the laws

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 158.

of neutrality, and without disavowing the maxims they have adopted in the different treaties and public engagements.

They are reducible to the following points:

(1) That all neutral ships may freely navigate from port to port, and on the coasts of nations at war.

(2) That the effects belonging to the subjects of the said warring Powers shall be free in all neutral vessels, except contraband merchandise.

(3) That the Empress, as to the specification of the above-mentioned merchandise, holds to what is mentioned in the 10th and 11th articles of her treaty of commerce with Great Britain, extending her obligations to all the Powers at war.

(4) That, to determine what is meant by a blockaded port, this is only to be understood of one which is so well kept in by the ships of the Power that attacks it, and which keep their places, that it is dangerous to enter into it.

(5) That these principles serve as a rule for proceedings and judgments upon the legality of prizes.

Her Imperial Majesty, in making these points public, does not hesitate to declare, that to maintain them, and to protect the honor of her flag, the security of the trade and navigation of her subjects, she has prepared the greatest part of her maritime forces. This measure will not, however, influence the strict neutrality she does observe, and will observe so long as she is not provoked and forced to break the bounds of moderation and perfect impartiality. It will be only in this extremity that her fleet have orders to go wherever honor, interest, and need may require.

In giving this solemn assurance with the usual openness of her character, the Empress can not do other than promise herself that the belligerent Powers, convinced of the sentiments of justice and equity which animate her, will contribute towards the accomplishment of these salutary purposes, which manifestly tend to the good of all nations, and to the advantage even of those at war. In consequence of which, Her Imperial Majesty will furnish her commanding officers with instructions conformable to the above-mentioned principles, founded upon the primitive laws of people, and so often adopted in their conventions.

**Russian Memorandum presented to the States-General of the
Netherlands, April 3, 1780¹**

High and Mighty Lords:

The underwritten Envoy Extraordinary from the Empress of all the Russias has the honor to communicate to you a copy of the declaration which the Empress his sovereign has made to the belligerent Powers. Your High Mightinesses may look upon this communication as a particular mark of the attention of the Empress for the republic, which is equally interested in the reasons which occasioned the declaration. He has further orders to declare to Your High Mightinesses, in the name of Her Imperial Majesty, that how desirous soever she may be on the one hand to maintain the strictest neutrality during the present war, yet Her Majesty is as determined to take the most efficacious means to support the honor of the Russian flag, the security of the trade, and the navigation of her subjects, and not suffer either to be hurt by any of the belligerent Powers; that, in order to prevent on this occasion any misunderstanding or false interpretation, she thought it necessary to specify in the declaration the limits of a free trade, and what is called contraband. That, if the definition of the former is founded upon the clearest notions of natural right, the latter is literally taken from the treaty of commerce between Russia and Great Britain, by which Her Imperial Majesty means incontestably to prove her good faith and impartiality towards each party; that she consequently apprehends that the other trading Powers will immediately come into her way of thinking relative to neutrality.

From these considerations, Her Imperial Majesty has ordered the underwritten to invite Your High Mightinesses to make a common cause with her, as such an union may serve to protect the trade and navigation, and at the same time observe a strict neutrality, and to communicate to Your High Mightinesses the regulation she has in consequence taken.

The same invitation has been made to the Courts of Copenhagen, Stockholm and Lisbon, in order that by the united endeavors of all the neutral maritime Powers, a natural system, founded on justice, might be established and legalized in favor of the trade of neutral nations, which by its real advantages might serve for a rule for future ages.

The underwritten does not doubt but your High Mightinesses will,

¹*Annual Register*, 1780, p. 346.

without delay, take the invitation of Her Imperial Majesty into consideration, and concur in immediately making a declaration to the belligerent Powers, founded on the same principles as that of the Empress, explaining at the same time the nature of a free and contraband trade, conformable to their respective treaties with the other nations.

For the rest, the underwritten has the honor to assure your High Mightinesses, that if, to establish such a glorious and advantageous system upon the most solid basis, they wished to open a negotiation with the above-mentioned neutral Powers on this subject, the Empress, his sovereign, is ready to join you.

Your Mightinesses will easily see the necessity of accelerating your resolutions upon objects of such importance and advantage for humanity in general. The underwritten begs of you to give him a speedy answer.

DEMETRI PRINCE GALLITZIN

HAGUE, *April 3, 1780.*

**Explanations demanded by the Court of Sweden relative to the
Russian Project for an Armed Neutrality, April 5, 1780¹**

ARTICLE 1

How and in what manner a reciprocal protection and mutual assistance shall be given.

ARTICLE 2

Whether each particular Power shall be obliged to protect the general commerce of the whole, or if in the meantime it may employ a part of its armament in the protection of its own particular commerce.

ARTICLE 3

If several of these combined squadrons should meet, or, for example, one or more of their vessels, what shall be the rule of their con-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 170. See also *Annual Register*, 1780, p. 354.

duct towards each other, and how far shall the neutral protection extend.

ARTICLE 4

It seems essential to agree upon the manner in which representations shall be made to the Powers at war, if, notwithstanding our measures, their ships of war, or armed vessels, should continue to interrupt our commerce in any manner. Must these remonstrances be made in the general name of the united Powers, or shall each particular Power plead its own cause only?

ARTICLE 5

Lastly, it appears essentially necessary to provide against this possible event, where one of the united Powers, seeing itself driven to extremities against any of the Powers actually at war, should claim the assistance of the allies in this convention to do her justice; in what manner can this be best concerted? A circumstance which equally requires a stipulation, that the reprisals in that case shall not be at the will of such party injured, but that the common voice shall decide: otherwise an individual Power might at its pleasure draw the rest against their inclinations and interests into disagreeable extremities, or break the whole league, and reduce matters into their original state, which would render the whole fruitless and of no effect.

**Extract from the Register of the Resolutions of the States-General
of Holland and West Friesland, April 13, 1780¹**

It has seemed fit and it has been resolved that the affairs of the States-General be so conducted that it shall be stated to the Prince de Gallizin, Envoy Extraordinary of Her Imperial Majesty of all the Russias, in reply to his memorial of the 3rd of this month, that Their High Mightinesses have received with great satisfaction the communication which it has pleased Her Imperial Majesty to send them con-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 166.

cerning her views and the declaration presented to the Courts of Versailles, of Madrid, and of London.

That Their High Mightinesses regard this communication as a striking mark of Her Imperial Majesty's affection for the Republic, and that they consider it an honor and a duty to make a frank and cordial reply.

That Their High Mightinesses can not help perceiving and admiring, as a fresh proof of the well-known high-mindedness and justice of Her Imperial Majesty, and the object she is endeavoring to accomplish and the means she has adopted to preserve during the present war the strictest neutrality toward the belligerent Powers, not only to ensure the honor of the Russian flag and to maintain the commerce and navigation of her subjects by not permitting any of the Powers at war to do it harm, but also in the interest of the peace and liberty of Europe, and to establish on the solid foundations of justice and the law of nations an equitable system of navigation and commerce for neutral Powers.

That Their High Mightinesses desire, no less than Her Imperial Majesty, to observe the strictest neutrality during the present war, but that they have themselves especially experienced the prejudice which the commerce and navigation of neutral Powers have suffered as the result of the vague and uncertain principles which the belligerent Powers have adopted concerning the rights of neutrals, according to the dictates of their individual interests or the necessities of the war operations; that they, therefore, like Her Imperial Majesty, regard it as absolutely necessary for the neutral Powers to cooperate in determining their aforesaid rights and in establishing them on a firm basis.

That, with respect to the determination of these rights, Their High Mightinesses, by conforming to the five points set forth in Her Imperial Majesty's declaration to the Courts of Versailles, Madrid and London, which was communicated to them, in her behalf, on the 3rd of this month, by Prince de Gallizin, stand ready to follow the example of Her Imperial Majesty, and to declare to the belligerent Powers, as she has done, that Their High Mightinesses are entirely disposed to enter into negotiations with Her Imperial Majesty and with the other neutral Powers to consider what measures should be taken in order that freedom of commerce and navigation may be most effectually maintained, with strict observance of neutrality toward the belligerent Powers.

That an extract from the resolution which shall be adopted on this subject shall be handed by their agent, van der Burch de Spieringshoek, to Prince de Gallizin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, with the request that it be brought to the knowledge of his sovereign, and that he support it in the most favorable manner with his good offices.

That an extract shall also be sent to Mr. de Swaert, resident of Their High Mightinesses at the Court of Russia, for his information and instruction, with orders to cooperate, so far as it lies in his power, toward the success of the good intentions of Their High Mightinesses.

That the said extract shall also be addressed to the Ministers of the Republic at the Courts of Copenhagen, Stockholm, and Lisbon, for their guidance, with orders to join with the Minister of Russia at the Courts where they reside and to support their efforts to the best of their ability.

Declaration of the Court of England to the States-General of the Netherlands, April 17, 1780¹

Since Great Britain was drawn into an involuntary war with France and Spain, the King's Ambassador to the States-General of the United Provinces has presented a number of memoranda demanding the assistance stipulated by treaties. Although these representations were reiterated in the most urgent manner in the memorandum of March 21, they have met with no response, and their High Mightinesses have displayed no intention to subscribe to them.

By thus deferring the fulfilment of their most positive engagements, they are deserting the alliance which has existed so long between the Crown of Great Britain and the Republic, and are placing themselves on the level of neutral Powers that are not bound to this country by any treaty. The principles of wisdom and equity, consequently, require the King to consider the States no longer in any other relation than the distant one in which they have placed themselves, and His Majesty, having taken this subject under consideration, has, with the

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 173.

advice of his Council, deemed it proper to order the immediate carrying out of the measures which were formally set forth in the memorandum of March 21, last, and which had previously been hinted to Count de Welderen, Envoy Extraordinary and Plenipotentiary of the Republic, in a verbal declaration by Lord Stormont, one of the Secretaries of State, nearly two months before the delivery of the aforesaid memorandum.

For these reasons, the King, with the advice of his Council, declares that the subjects of the United Provinces shall henceforth be considered on the footing of those of neutral Powers, which have no treaty privileges. By these presents, His Majesty suspends provisionally and until further orders all stipulations specifically intended to favor in time of war the freedom of navigation and commerce of the subjects of the States-General, as set forth in the various treaties in force between His Majesty and the Republic, and particularly in the marine treaties concluded between Great Britain and the United Provinces at London on December 1, 1674.

His Majesty, animated by a feeling of humanity, desiring nevertheless to spare the interests of individuals, and not seeking to cause them loss by an act taking them unawares, declares, moreover, with the advice of his Council, that the present ordinance shall not go into effect until the following dates, to wit:

In the north seas and channel twelve days from this date.

From the channel, the British seas and the north seas to the Canary Islands inclusive, both in the ocean and in the Mediterranean, the time will be six weeks from the date of these presents.

The period will be three months from the Canary Islands to the equinoctial line or equator.

Finally, it will be six months, for the waters situated beyond the equator, and in general in all other quarters of the world without exception, or without a more specific determination of time or place.

RESCRIPT ADDED TO THE FOREGOING ORDER

Inasmuch as, in accordance with our order in Council, dated April 17, 1780, the various treaties granting special privileges to subjects of the States-General of the United Provinces in the matter of their commerce and navigation in time of war, are suspended, and as the subjects of the States-General are to be considered on the same footing as those of other neutral States having no treaty privileges, until it

shall please us formally to signify the contrary, the commanders of our war-ships and those of all ships and vessels which have letters of marque and of reprisal are authorized by these presents to seize and detain all ships and vessels belonging to subjects of the States-General whenever they are found to have on board any effects belonging to the enemies of His Majesty or effects that are considered by the general law of nations as contraband of war.

Reply of the King of Spain to the Declaration of the Empress of Russia, April 18, 1780¹

The King, being informed of the Empress's sentiments with respect to the belligerent and neutral Powers, by a memorial remitted to the *Compte de Florida Blanca*, on the 15th instant by Mr. Etienne de Zinowief, Minister to Her Imperial Majesty: the King considers this as the effect of a just confidence which His Majesty has on his part merited; and it is yet more agreeable that the principles adopted by this sovereign should be the same as have always guided the King, and which His Majesty has for a long time, but without success, endeavored to cause England to observe, while Spain remained neuter. These principles are founded in justice, equity, and moderation; and these same principles Russia and all the other Powers have experienced in the resolutions formed by His Majesty; and it has been entirely owing to the conduct of the English navy, both in the last and the present war (a conduct wholly subversive of the received rules among neutral Powers) that His Majesty has been obliged to follow their example; since the English paying no respect to a neutral flag, if the same be laden with effects belonging to the enemy, even if the articles should not be contraband, and that flag not using any means of defending itself, there could not be any just cause why Spain should not make reprisals, to indemnify herself for the great disadvantages she must otherwise labor under. The neutral Powers have also laid themselves open to the inconveniences they have suffered, by fur-

¹*Annual Register*, 1780, p. 350. French text at Martens, *Recueil de Traités*, vol. 3, p. 164.

nishing themselves with double papers, and other artifices, to prevent the capture of their vessels; from which have followed captures and detentions innumerable, and other disagreeable consequences, though in reality not so prejudicial as pretended; on the contrary, some of these detentions have turned to the advantage of the proprietors, as the goods, being sold in the port where they were condemned, have frequently gone off at a higher price than they would have done at the place of their destination.

The King, nevertheless, not contented with these proofs of his justification, which have been manifest to all Europe, will this day have the glory of being the first to give the example of respecting the neutral flag of all the Courts, that have consented, or shall consent, to defend it, till His Majesty finds what part the English navy takes, and whether they will, together with their privateers, keep within proper bounds. And to show to all the neutral Powers how much Spain is desirous of observing the same rules in time of war as she was directed by whilst neuter, His Majesty conforms to the other points contained in the declaration of Russia. To be understood, nevertheless, that, with regard to the blockade of Gibraltar, the danger of entering subsists, as determined by the fourth article of the said declaration. These dangers may, however, be avoided by the neutral Powers, if they conform to those rules of precaution established by His Majesty's declaration of the 13th of last March, which has been communicated to the Court of Petersburg by his Minister.

FLORIDA BLANCA

At ARANJUEZ, 18 April, 1780.

Reply of the Court of Great Britain to the Declaration of the Em-press of Russia, April 23, 1780¹

During the course of the war, wherein His Britannic Majesty finds himself engaged through the unprovoked aggression of France and Spain, he hath constantly manifested his sentiments of justice, equity,

¹*Annual Register*, 1780, p. 349. French text at Martens, *Recueil de Traités*, vol. 3, p. 160.

and moderation, in every part of his conduct. His Majesty hath acted towards friendly and neutral Powers according to their own procedure respecting Great Britain, and conformable to the clearest principles, generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeable to the tenor of his different engagements with other Powers; those engagements have altered this primitive law, by mutual stipulations, proportioned to the will and convenience of the contracting Parties.

Strongly attached to Her Majesty of all the Russias, by the ties of reciprocal friendship, and common interest, the king, from the commencement of those troubles, gave the most precise orders respecting the flag of Her Imperial Majesty, and the commerce of her subjects, agreeable to the law of nations, and the tenor of the engagements stipulated by his treaty of commerce with her, and to which he shall adhere with the most scrupulous exactness.

The orders to this intent have been renewed, and the utmost care will be taken for their strictest execution.

It may be presumed, not the least irregularity will happen; but in case any infringements, contrary to these repeated orders, take place, the courts of admiralty, which in this, like all other countries, are established to take cognizance of such matters, and in all cases do judge solely by the law of nations, and by the specific stipulations of different treaties, will redress every hardship in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses.

Extract from the Register of Resolutions of the States-General of the Netherlands, April 24, 1780, replying to the Russian Memorandum¹

Having deliberated by supposition on the memorandum which the Prince Gallitzin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, presented to the Assembly on the 3d instant, accompanied by a declaration made by Her said Imperial Majesty

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 168.

to the Courts of England, France, and Spain, with regard to the freedom of commerce and navigation of her subjects, in which memorandum this Minister makes known to Their High Mightinesses the disposition of his sovereign to protect, in concert with neutral Powers, the commerce and navigation of their respective subjects, as more fully set forth in the above-mentioned documents of the 3d; it has been deemed well and it has been decided to reply to the Prince Gallitzin with regard to his said memorandum that Their High Mightinesses have received with great satisfaction the communication respecting her views which Her Imperial Majesty has been pleased to have presented to them, and the declaration that she has had submitted to the Courts of London, Versailles, and Madrid; that Their High Mightinesses look upon this communication as a striking proof of the fact that Her Imperial Majesty is well disposed toward the Republic and that they feel it to be an honor and a duty to reply cordially and sincerely; that Their High Mightinesses commend and consider as a further effect of the recognized magnanimity and justice of Her Imperial Majesty, as well as the goal which she has set before herself, that the means which she has conceived to maintain during the present war the most scrupulous neutrality with the belligerent Powers, and to assure not only the honor of the flag of Russia and the freedom of commerce and of navigation of her subjects, and not to permit any of the Powers that are now, at war to inflict the slightest injury upon them, but also to protect the liberties and tranquillity of Europe, and to fix and establish upon the most solid foundations of equity and the law of nations, and of treaties still in force, an equitable system for the navigation and commerce of neutral Powers.

That Their High Mightinesses, like Her Imperial Majesty, desiring to observe a strict neutrality during the present war, have experienced only too well the injuries suffered by the navigation and commerce of neutral Powers through the vague and arbitrary conceptions held by the belligerent Powers on the right of neutrals, which are influenced by their individual interests and their war operations, and it is for this reason that Their High Mightinesses, like Her Imperial Majesty, deem it absolutely necessary that this right be established upon solid foundations and maintained in concert by the maritime neutral Powers; that with respect to the determination of this right Their High Mightinesses, conforming entirely to the five points contained in the declaration made by Her Imperial Majesty to the Courts of

Versailles, Madrid, and London, and communicated in her name to Their High Mightinesses on April 3 by the Prince Gallitzin, are, following the example of Her Imperial Majesty, ready to make a similar declaration to the belligerent Powers. Their High Mightinesses being thus disposed to enter into a conference with this Princess and the other neutral maritime Powers respecting the measures by means of which, by the observance of strict neutrality between the Powers at war, freedom of navigation and commerce may be maintained with their united forces in the most effectual manner, both now and hereafter.

An extract of the present resolution of Their High Mightinesses shall be transmitted by their agent van der Burch de Spieringshoeck to the Prince Gallitzin, Envoy Extraordinary of Her Majesty the Empress of all the Russias, who shall be requested to communicate it to Her Imperial Majesty and to present to her this reply under the most favorable aspect, accompanying it with his good offices.

Reply of the King of France to the Declaration of the Empress of Russia, April 25, 1780¹

The war in which the King is engaged having no other object than the attachment of His Majesty to the freedom of the seas, he could not but with the truest satisfaction see the Empress of Russia adopt the same principle and resolve to maintain it. That which Her Imperial Majesty claims from the belligerent Powers is no other than the rules already prescribed to the French marine, the execution of which is maintained with an exactitude known and applauded by all Europe.

The liberty of neutral vessels, restrained only in a few cases, is the direct consequence of neutral right, the safeguard of all nations, and the relief even of those at war. The King has been desirous, not only to procure a freedom of navigation to the subjects of the Empress of Russia, but to those of all the States who hold their neutrality, and that upon the same conditions as are announced in the treaty to which His Majesty this day answers.

¹*Annual Register*, 1780, p. 349; Martens, *Recueil de Traités*, vol. 3, p. 162.

His Majesty thought he had taken a great step for the general good, and prepared a glorious epocha for his reign, by fixing by his example, the rights which every belligerent Power may, and ought to acknowledge to be due to neutral vessels. His hopes have not been deceived, as the Empress, in avowing the strictest neutrality, has declared in favor of a system which the King is supporting at the price of his people's blood, and that Her Majesty adopts the same rights as he would wish to make the basis of the maritime code.

If fresh orders were necessary to prevent the vessels of Her Imperial Majesty from being disturbed in their navigation by the subjects of the King, His Majesty would immediately give them; but the Empress will no doubt be satisfied with the dispositions made by His Majesty in the regulations he has published. They do not hold by circumstances only, but they are founded on the right of nations, and quite suitable to a prince who finds the happiness of his own kingdom in that of the general prosperity. The King wishes Her Imperial Majesty would add to the means she has fixed to determine what merchandises are reckoned contraband in time of war, precise rules in the form of the sea papers with which the Russian ships will be furnished.

With this precaution, His Majesty is assured nothing will happen to make him regret the having put the Russian navigators on as advantageous a footing as can be in time of war. Happy circumstances have more than once occurred to prove to the Courts how important it is for them to explain themselves freely relative to their respective interests.

His Majesty is very happy to have explained his way of thinking to Her Imperial Majesty upon so interesting a point for Russia, and the trading Powers of Europe. He the more sincerely applauds the principles and views of the Empress, as His Majesty partakes of the same sentiments which have brought Her Majesty to adopt those measures, which must be to the advantage of her own subjects, and all other nations.

VERSAILLES, *April 25, 1780.*

Reply of the Court of Russia to the Explanations demanded by Sweden relative to the Project for an Armed Neutrality, April 29, 1780¹

ARTICLE 1

As to the manner in which protection and mutual assistance shall be granted, it must be settled by a formal convention, to which all the neutral Powers will be invited, the principal end of which is, to ensure a free navigation to the merchant ships of all nations. Whenever such vessel shall have proved from its papers, that it carries no contraband goods, the protection of a squadron, or vessels of war, shall be granted her, under whose care she shall put herself, and which shall prevent her being interrupted. From hence it follows:

ARTICLE 2

That each Power must concur in the general security of commerce. In the meantime, the better to accomplish this object, it will be necessary to settle, by means of a separate article, the places and distances which may be judged proper for the station of each Power. From that method will arise this advantage, that all the squadrons of the allies will form a kind of chain, and be able to assist each other; the particular arrangement to be confined only to the knowledge of the allies, though the convention in all other points, will be communicated to the Powers at war, accompanied with all the protestations of a strict neutrality.

ARTICLE 3

It is undoubtedly the principle of a perfect equality, which must regulate this point. We shall follow the common mode with regard to safety. In case the squadrons should meet and engage, the commanders will conform to the usages of the sea service, because, as is observed above, the reciprocal protection, under these conditions, should be unlimited.

ARTICLE 4

It seems expedient that the representations mentioned in this article be made by the party aggrieved; and that the Ministers of the other

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 171. See also *Annual Register*, 1780, p. 355.

confederate Powers support those remonstrances in the most forcible and efficacious manner.

ARTICLE 5

We feel all the importance of this consideration; and, to render it clear, it is necessary to distinguish the case.

If any one of the allied Powers should suffer itself to be drawn in by motives contrary to the established principles of a neutrality and perfect impartiality, should injure its laws, or extend their bounds, it can not certainly be expected that the others should espouse the quarrel; on the contrary, such a conduct would be deemed an abandoning the ties which unite them. But if the insult offered to one of the allies should be hostile to the principles adopted and announced in the face of all Europe, or should be marked with the character of hatred and animosity, inspired by resentment, these common measures of the confederacy, which have no other tendency than to make, in a precise and irrevocable manner, laws for the liberty of commerce, and the rights of every neutral nation, then it shall be held indispensable for the united Powers to make a common cause of it (at sea only) without its being a ground-work for other operations, as these connections are purely maritime, having no other object than naval commerce and navigation.

From all that is said above, it evidently results, that the common will of all, founded upon the principles admitted and adopted by the contracting parties, must alone decide, and that it will always be the fixed basis of the conduct and operations of this union. Finally, we shall observe, that these conventions suppose no other naval armament than what shall be conformable to circumstances, according as those shall render them necessary, or as may be agreed. It is probable that this agreement, once ratified and established, will be of the greatest consequence; and that the belligerent Powers will find in it sufficient motives to persuade them to respect the neutral flag, and prevent their provoking the resentment of a respectable communion, founded under the auspices of the most evident justice, and the sole idea of which is received with the universal applause of all impartial Europe.

Declaration of His Danish Majesty regarding the Neutrality of the Baltic Sea, communicated to the Courts of the Belligerent Powers, May 8, 1780¹

The States of the King of Denmark and Norway are situated in such a way that the commerce of his subjects with the Provinces belonging to his Crown would be disturbed, unless His Majesty took all measures capable of guaranteeing the Baltic and its coasts from hostilities and acts of violence of all kinds, and of protecting it from raids by privateers and armed vessels.

In order, therefore, to keep open, free and tranquil communication between his Provinces, the King has resolved that the Baltic Sea being a closed sea, incontestably so by reason of its geographical situation, where all nations should and may navigate in peace and enjoy all the advantages of perfect tranquillity, His Majesty could not admit thereto armed vessels of the Powers at war for the purpose of committing acts of hostility against any one whatsoever.

The other two Courts of the north adopt and announce the same system, which is the more just and natural because all the Powers whose States surround the Baltic enjoy the most profound peace and regard it as one of the greatest blessings that sovereigns can secure to their subjects.

Russian Ordinance concerning Navigation under the Merchant Flag of Russia, May 19, 1780²

ARTICLE 1

Merchant ships may not take part in the war, either directly or indirectly, or under any pretext whatsoever; neither may they give aid to any of the belligerent Powers by supplying it with contraband goods under the flag of Russia. Contraband goods comprise specifically cannons, mortars, muskets, pistols, bombs, grenades, bullets

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 175.

²Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 271.

of balls suitable for shooting, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, scabbards, cartridge-boxes, saddles, and bridles. Merchant ships must also take great care not to have on board a greater quantity of such munitions of war than it needs for its own use, that is to say, a quantity sufficient to supply each sailor or passenger.

ARTICLE 2

All other goods, to whomsoever they may belong, and even if they belong to subjects of one of the belligerent Powers, may be freely transported on Russian vessels, and shall enjoy, together with the goods of our subjects, the protection of the Russian flag, except the goods mentioned in Article 1 under the head of contraband, which are declared to be such in Article 11 of our treaty of commerce with England. In consideration of this security of goods permitted on board neutral vessels, our subjects must take care not to ship effects belonging to them on vessels of the nations at war, in order to avoid any unpleasantness or untoward incident.

ARTICLE 3

Every vessel sailing from the port of this city or from any other port of our Empire must be supplied with sufficient proofs that it belongs to Russian subjects; that is to say, the customary ship's register and a customs certificate setting forth:

- (1) The kind and quantity of the goods on board.
- (2) For whose account they have been purchased and to whom they are shipped.
- (3) To what port and to whom the vessel and its cargo are consigned.

For greater security the certificates issued by the custom house shall be viséd by the admiralty, or in its absence by the magistrate of the place.

ARTICLE 4

These prerogatives shall be enjoyed not only by our born subjects but also by foreigners, who are domiciled under our rule and pay public taxes like our own subjects; that is to say, as long as they dwell in our country, since in any other case they would not be permitted to use the merchant flag of Russia.

ARTICLE 5

Each individual Russian vessel, even though a single owner sends two or three vessels at the same time to the same place, must be provided with the documents mentioned in Article 3, which may prove their ownership in case the vessels should become separated during the voyage or in case they should be forced to follow different courses.

ARTICLE 6

It is forbidden for any Russian vessel to have false or equivocal bills of lading, charter parties, or other ship's papers, still more false declarations, inasmuch as these last always expose them to inevitable danger. Therefore special attention should be given to see that the documents are in good order and state clearly, as specified above, the true destination of the vessel and the character of its cargo. It is also necessary that the contract between the owner of the goods and the master of the vessel or the agreement known as the charter party be always on board. But, as it quite often happens that the owner of the goods, in shipping them, either on his own vessel or on some other neutral vessel chartered by him, decides in advance, solely on speculation, to sell them in a certain port, and, in case the price in that port is too low, in some more distant port, he must not, in such a case, fail to specify and determine the two ports in the order of the course and of their situation, in one and the same bill of lading, and not in two. This same precaution must be observed with regard to charter parties, in order that there may be no differences between them and the bills of lading. And, in case any of our subjects, in contempt of these provisions, should stoop to artifice and duplicity, they may be assured that they shall never enjoy our protection, which shall be given only to lawful and innocent commerce, and under no circumstances to illicit and fraudulent trade.

ARTICLE 7

Every Russian vessel which, after having unloaded its cargo in some foreign port, purposes to return to its country or to proceed further to some other foreign point, must provide itself in this port, and in any other where it may stop to trade, with the documents required by the practice of the country, in order that it may be ascertained at any time to what nation the vessel belongs, from what port it comes, for what port it is bound, and with what new goods it has been loaded.

ARTICLE 8

Inasmuch as the aforesaid documents are absolutely necessary to prove neutral ownership of goods on board the ship, particular care must be exercised not to throw them overboard, or any other writings or papers without exception, or on any occasion whatever, particularly on encountering another vessel, since by such a proceeding the vessel may lay itself open to well founded suspicion and to disagreeable consequences.

ARTICLE 9

Care should be taken that there be not on board a Russian vessel a merchant, a commercial employee, or other officer, or more than one third of the sailors, who are subjects of one of the belligerent Powers, since otherwise such a vessel might meet with many unpleasant incidents. Vessels purchased in time of war from subjects of belligerent Powers would be exposed to similar complications. Therefore, now and as long as the present war lasts, they may not be purchased for any other purpose than for navigation in the Baltic or in the Black Sea.

ARTICLE 10

It is forbidden, in general, to carry any goods from any point whatever to places that are now under blockade or siege, by land or by sea; and if any of our merchants should risk such unlawful commerce, they shall not, in spite of their loss, have the slightest right to seek our protection.

ARTICLE 11

All our subjects, who happen to be in foreign lands for commercial purposes, must conform strictly to the local mercantile laws in force, as well as to the ordinances of the place where they reside or to which they send their vessels. And in order that these laws and ordinances may be known to them so far as possible, the Department of Foreign Affairs shall communicate to our Chamber of Commerce all papers relating thereto, so that all merchants may be informed thereof by means of the gazettes.

ARTICLE 12

Our purpose to protect and to defend in the most effectual manner the commerce and navigation of our faithful subjects in nowise contemplates that our course shall result in injury to any of the belligerent

Powers, or that individual merchants take advantage of it for the purpose of making unlawful gains. Therefore we expressly forbid the merchants of our empire to permit foreigners to sail ships or to carry on commerce under their name. In case of contravention of our will in this respect, the guilty party shall forfeit his right to engage in maritime commerce and to enjoy our imperial protection therein.

If our subjects, who are engaged in maritime commerce, strictly comply with the terms of this ordinance, they can count, in return, on our full and unlimited protection in their business in a foreign country, as well as on the attentive and zealous intercession of the Minister, agents, or consuls, who reside there in our behalf. To this end our Department of Foreign Affairs will provide them in due time with proper instructions. On the other hand, those of our subjects who shall not observe these rules can not have the slightest claim on our protection in the misfortunes and losses which may result from wilfully neglecting to use the necessary circumspection enjoined upon them. The Chamber of Commerce, in notifying our present ordinance to Russian merchants engaged in commerce in the ports, shall not fail at the same time to supply the custom houses with the necessary instructions relating thereto, nor to inform the heads of the governments where there are ports of our will, in order that it may be uniformly observed in all the tribunals, in so far as they are concerned therewith.

Given at Czarsko-Zelo, May 8/19, 1780.

(Signed) CATHERINE

**Reply of the Court of France to the Danish Declaration regarding
the Neutrality of the Baltic Sea, May 25, 1780¹**

Far from wishing to extend the theater of the war, the King has constantly manifested his desire to restrict it. The solicitude of His Majesty to fix precisely the portions of neutral coasts where his subjects may not attack the enemy has already proved how greatly he respected the sovereignty of all the Powers that border on the Baltic Sea; since they have declared themselves neutral, His Majesty has

¹Translation. French text at Martens, vol. 3, 176.

regarded that sea as closed by order of its sovereigns. He shall continue to follow the same course, and since it is apparently the wish of His Danish Majesty that orders be given that no French vessel shall commit acts of hostility beyond the sound, the Envoy of Denmark can assure His Majesty that the King will gladly comply with his desire.

His Majesty has nothing more at heart than to do what is advantageous and agreeable to neutral Powers, those Powers especially that show themselves to be the protectors of the freedom of the seas, and in particular His Danish Majesty, whose confidence and friendship he earnestly desires to keep.

(Signed) VERGENNES

Declaration of His Danish Majesty to the Courts of London, Versailles and Madrid, July 8, 1780¹

If the most exact and perfect neutrality, with the most regular navigation, and the most inviolable respect to treaties, could have kept free the commerce of the subjects of the King of Denmark and Norway from the inroads of the Powers with whom he is at peace, free and independent, it would not be necessary to take measures to ensure to his subjects that liberty to which they have the most incontrovertible right. The King of Denmark has always founded his glory and his grandeur upon the esteem and confidence of other people. It has been his rule, from the beginning of his reign, to testify to all the Powers, his friends, a conduct the most capable of convincing them of his pacific intentions, and of his desire to contribute to the general happiness of Europe. His proceedings have always been conformable to these principles, against which nothing can be alleged; he has not, till now, addressed himself, but to the Powers at war, to obtain a redress of his griefs; and he has never wanted moderation in his demands, nor acknowledgments when they have received the success they deserved: but the neutral navigation has been too often

¹Translation. For the French text, see Martens, *Recueil de Traités*, vol. 3, p. 178. See also, *Annual Register*, 1780, p. 352.

molested, and the most innocent commerce of his subjects too frequently troubled; so that the King finds himself obliged to take proper measures to assure to himself and his allies the safety of commerce and navigation, and the maintenance of the inseparable rights of liberty and independence. If the duties of neutrality are sacred, the law of nations has also its rights avowed by all impartial Powers, established by custom, and founded upon equity and reason. A nation independent and neuter, does not lose by the war of others the rights which she had before the war, because peace exists between her and all the belligerent Powers. Without receiving or being obliged to follow the laws of either of them, she is allowed to follow, in all places (contraband excepted), the traffic which she would have a right to do, if peace existed with all Europe, as it exists with her. The King pretends to nothing beyond what the neutrality allows him. This is his rule, and that of his people; and the King can not accord to the principle, that a Power at war has a right to interrupt the commerce of his subjects. He thinks it due to himself and his subjects, faithful observers of these rules, and to the Powers at war themselves, to declare to them the following principles, which he has always held, and which he will always avow and maintain, in concert with the Empress of all the Russias, whose sentiments he finds entirely conformable with his own.

(1) That neutral vessels have a right to navigate freely from port to port, even on the coasts of the Powers at war.

(2) That the effects of the subjects of the Powers at war shall be free in neutral vessels, except such as are deemed contraband.

(3) That nothing is to be understood under the denominations of contraband, that is not expressly mentioned as such in the third article of his treaty of commerce with Great Britain, in the year 1670, and the 26th and 27th articles of his treaty of commerce with France, in the year 1742; and the King will equally maintain these rules with those Powers with whom he has no treaty.

(4) That he will look upon a blockaded port as one into which no vessel can enter without evident danger, on account of vessels of war stationed there, which form an effectual blockade.

(5) That these principles serve for rules in procedure, and that justice shall be expeditiously rendered, after the rules of the sea, conformably to treaty and usage received.

(6) His majesty does not hesitate to declare, that he will maintain

these principles with the honor of his flag, and the liberty and independence of the commerce and navigation of his subjects; and that it is for this purpose he has armed a part of his navy, although he is desirous to preserve, with all the Powers at war, not only a good understanding, but all the friendship which the neutrality can admit of. The King will never recede from these principles, unless he is forced to it: he knows the duties and the obligations; he respects them as he does his treaties and desires no other than to maintain them. His Majesty is persuaded, that the belligerent Powers will acknowledge the justice of his motives; that they will be as averse as himself to doing any thing that may oppress the liberties of mankind, and that they will give their orders to their admiralty and to their officers, conformably to the principles above recited, which tend to the general happiness and interest of all Europe.

COPENHAGEN, *July 8, 1780.*

BERNSTORFF

Convention for an Armed Neutrality between Russia and Denmark and Norway, July 9, 1780¹

Whereas the commerce and navigation of neuter Powers is greatly injured by the present war at sea which has broken out between Great Britain, on the one part, and France and Spain, on the other part, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, in consequence of their assiduous attention to support their own dignity, and to unite their constant care for the safety and welfare of their respective subjects; as well as from the respect which they have at all times manifested for the rights of nations in general, have found it necessary, in the present circumstances, to determine their conduct according to these sentiments.

Her Majesty the Empress of Russia, in her declaration to the belligerent Powers, dated February 28, 1780, has plainly stated, in the face of all Europe, the fundamental principles which derive from

¹Jenkinson's *Treaties*, vol. iii, p. 259. Sweden and the United Provinces acceded to this treaty on July 21, 1780, and January 5, 1781, respectively

the primitive rights of mankind, and which Her said Majesty claims and adopts as a rule of her conduct in the present war. As this attention of Her Imperial Majesty, in watching over the reciprocal rights of nations, has been honored with the approbation of all neutral Powers, Her said Majesty has engaged in this affair, which materially concerns her most essential interests, and has proceeded therein so far that it may be seriously considered as a subject worthy of the attention of both the present and future time, as it tends to the establishment of a permanent and invariable system of the rights, prerogatives, and engagements of neutrality.

His Majesty the King of Denmark and Norway, convinced of the justice of these principles, has likewise established and claimed them in his declaration of the 8th of July, 1780, which declaration (as well as that of the Empress of Russia) His said Majesty has caused to be communicated to the belligerent Powers; and in order to support these principles efficaciously, His Majesty has ordered part of his fleet to be fitted out. From these proceedings have arisen that harmony and unanimity with which Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, have thought necessary in mutual friendship and reciprocal confidence; and in conformity to the interest of their respective subjects, to confirm their common engagements by the conclusion of a formal convention.

To this end Their Imperial and Royal Majesties have chosen and appointed the following plenipotentiaries, viz.: Her Majesty the Empress of Russia has appointed Charles van Osten, commonly called Baron Saken, Privy Counselor of State, Knight of the Order of St. Ann, Minister Plenipotentiary from Her said Majesty to the Court of Denmark, etc., and His Majesty the King of Denmark and Norway has appointed Otton Count of Thott, Privy Counsellor of State, Knight of the Order of the Elephant, etc., Joachim Otton Baron de Schack-Rathlau, Privy Counselor of State, Knight of the Order of the Elephant, etc., John Henry Baron Eichstedt, Privy Counselor of State, Governor of His Royal Highness the Hereditary Prince of Denmark, Knight of the Order of the Elephant, etc., and Andrew Peter Count Bernstorff, Privy Counselor and Minister and Secretary of State for the foreign department, President of the Royal German Chancery, Knight of the Order of the Elephant, etc., which said Ministers, after having exchanged their full powers, which were found to be in due form, have concluded and agreed to the following articles:

ARTICLE 1

That Their aforesaid Majesties are sincerely determined to maintain, constantly, the most perfect friendship and harmony with the different Powers at present engaged in war, and to observe the most scrupulous neutrality; and in consequence thereof they declare, that adhering to this determination, the prohibition of all contraband trade with the Powers at present at war, or with those who may hereafter be engaged therein, shall be strictly observed by their respective subjects.

ARTICLE 2

To avoid all errors and misunderstandings with regard to commodities which shall be deemed contraband, Her Majesty the Empress of Russia, and His Majesty the King of Denmark and Norway, do hereby declare, that they shall only acknowledge such articles to be contraband commodities as are included and mentioned in the treaties now subsisting between their respective Courts and the one or the other of the belligerent Powers.

Her Majesty the Empress of Russia conforms herself entirely in this respect to the Articles 10 and 12 of her treaty of commerce with the Court of Great Britain, and extends likewise the engagements of this treaty, which are founded upon the natural rights of nations, to the Courts of France and Spain; which said Courts, until the date of this present convention, have no treaty of commerce with her empire.

His Majesty the King of Denmark and Norway, on his part, conforms himself chiefly to the 2d article of this treaty of commerce with the Court of Great Britain, and to the Articles 26 and 27 of his treaty of commerce with France, and extends also the engagements of this last-mentioned treaty to the Court of Spain, as His said Majesty has no treaty with the last-mentioned Power, which determines any conditions relative to this subject.

ARTICLE 3

As by these means all contraband goods and commodities are determined and ascertained conformable to the treaties and special convention subsisting between the high contracting Parties and the bel-

ligerent Powers, and chiefly in the treaty between Russia and Great Britain of the 20th of June, 1766, as well as in that between Denmark and Great Britain, dated July 11, 1670, and by that concluded between Denmark and France, on the 23d of August, 1742; the will and intention of Her Majesty the Empress of Russia, and of His Majesty the King of Denmark and Norway are, that all other commerce shall be and remain free.

Their said Majesties having already set forth in their declaration to the belligerent Powers, that they have laid down, as the basis of their conduct, the general principles of the natural rights of mankind, from whence the liberty of commerce and navigation, and the rights of neuter nations derive, are resolved not to depend any longer upon the arbitrary explication of these rights, which is generally dictated by partial advantages and momentary interests; with this view, Their said Majesties have agreed upon the following articles:

(1) That all neutral vessels shall be permitted to navigate from port to port, and on the coasts of the belligerent Powers.

(2) That the effects belonging to subjects of the belligerent Powers shall be free on board neuter ships and vessels, excepting only such articles as are stipulated to be deemed contraband.

(3) In order to determine what is to be considered as a port blocked up, it is hereby declared, that that port shall only be deemed as such into which no ships can enter without being exposed to an evident peril from the forces that attack the said port, and the ships that shall have taken a station near enough for that purpose.

(4) That neuter vessels shall only be liable to be stopped and seized for just and cogent reasons, and upon the most convincing proofs, that justice shall be done unto them without loss of time, and that the proceedings shall always be uniform, speedy, and according to the laws; and that whenever any shall be found to have been stopped, or suffered any damage without any sufficient cause, they shall not only be entitled to a sufficient compensation, but also to a complete satisfaction for the insult offered to the flag of Their Majesties.

ARTICLE 4

In order to obtain this end, and to protect the general commerce of their subjects, founded upon these invariable principles, Her Majesty, the Empress of Russia, and His Majesty, the King of Denmark and

Norway, have resolved to fit out, separately, a proportionate number of ships of the line and frigates; and the squadrons of these respective Powers shall repair to such latitudes, and shall serve as convoys to the trading ships of their respective subjects, wherever the commerce and navigation of each nation shall require it.

ARTICLE 5

In case that any merchant ships belonging to subjects of one of the high contracting Parties should happen to be in a sea or latitude where no ships of war of their sovereign are stationed, and that they consequently could not obtain any protection from the forces of their own nation, the commander of the ships of war of the other Power, upon being duly requested, shall immediately afford them all necessary assistance; and in this case, it is hereby stipulated, that the ships and frigates of the one Power shall always grant the necessary protection and assistance to the trading ships of the other Power; provided always, that those who shall claim such assistance or protection, shall not carry on any illicit trade which may be contrary to the laws of neutrality, as received and mentioned here above.

ARTICLE 6

The present convention shall not be retroactive, and consequently neither of the high contracting Parties can take recognizance of any differences that may have arisen between them and other Powers before its conclusion, unless the matter in litigation shall be relative to violences which are still existing, and which may tend to oppress all neuter nations in Europe.

ARTICLE 7

If, notwithstanding the vigilant and amicable care of the two high contracting Parties, and the most exact observations of neutrality on their part, any Russian or Danish merchant ships should happen to be insulted or taken by the ships of war or privateers of one or the other of the belligerent Powers, the Minister of the offended party shall make proper representations to that Court whose ships of war or privateers have been guilty of the said act; he shall insist upon a reasonable compensation for the damages or loss of time, as well as upon

a complete satisfaction for the insult offered to the flag of his sovereign. The Minister of the other high contracting Party shall second and support these representations in the most serious and efficacious manner, and thus they shall continue jointly and unanimously until their request is granted. But in case of a refusal, or any unreasonable delay from time to time to redress these grievances, their aforesaid Majesties do hereby declare, that they will make use of reprisals towards that Power that refuses to do them justice, and will immediately unite, in the most efficacious means, to execute these just reprisals.

ARTICLE 8

In case that one of the high contracting Parties, or both together, should be disturbed, molested, or attacked, in consequence of this convention, or any subject whatever relative thereto, it is hereby stipulated and agreed, that the two Powers shall immediately act in concert for their mutual and reciprocal defense, and shall employ and unite all their forces to obtain a proper satisfaction, as well for the insult offered to their flag, as for the losses sustained by their respective subjects.

ARTICLE 9

This convention shall be in full force as long as this present war shall last; and the engagements contained therein shall serve as the basis for all future engagements and treaties that may be concluded hereafter, according to circumstances, and in case any other maritime war should hereafter unfortunately disturb the tranquillity of Europe. As to the rest, all that has been stipulated and agreed upon, shall be considered as permanent and invariable, as well with regard to mercantile affairs as for what concerns the navy, and shall have force of law in all decisions upon the rights of neuter nations.

ARTICLE 10

As the end and chief object of this convention is to secure the general liberty of the commerce and navigation, Their Majesties, the Empress of Russia, and the King of Denmark and Norway, do hereby consent, and engage themselves reciprocally, to permit that other neuter Powers may accede thereto; and that these Powers so acceding,

being fully acquainted with the fundamental principles and engagements concerned shall share in the obligations and advantages of the said convention.

ARTICLE 11

And in order that the belligerent Powers may have no pretext for their proceedings, or pretend to be unacquainted with these engagements between Their aforesaid Majesties, the high contracting Powers do hereby promise, that they will separately acquaint the belligerent Powers with the measures they have taken, and the motives which have engaged them to unite in this affair; which measures are the less hostile as they are no ways detrimental to any other Power, but have only for object the security of the commerce and navigation of their respective subjects.

ARTICLE 12

The present convention shall be ratified by the two high contracting Parties, and the ratifications shall be exchanged, in due form, within the term of six weeks from the date hereof, or sooner if possible. In virtue whereof we, whose names are hereunto written, being properly invested with full powers to that effect, have signed and sealed this present convention.

Done at Copenhagen, the 9th of July, 1780.

(L. S.) CHARLES VAN OSTENSAKEN

(L. S.) J. SCHACK RATHLAU

(L. S.) A. P. COUNT OF BERNSTORFF

(L. S.) O. THOTT

(L. S.) H. EICHSTEDT

The ratifications of this convention have been exchanged at Copenhagen, on the 16th of September, 1780, by the same Ministers Plenipotentiaries who have signed the same.

And as a like convention has been concluded at Petersburg, between the Ministers chosen and appointed to that effect, namely, on the part of Her Majesty the Empress of Russia, Count Nikita Panin, Privy Counselor, Minister and Secretary of State, Knight of the Orders of St. Andrew, St. Alexander-Newsky, and St. Ann; and Count J Osterman, Vice Chancellor of Russia, Privy Counselor of State and Knight of the Orders of St. Alexander-Newsky, and St. Ann; and on the part of His Majesty the King of Sweden, Baron Frederick

Van. Nolken, Envoy Extraordinary from His Swedish Majesty to the Court of Petersburg, Chamberlain, Commander of the Order of the Polar Star, and Knight of the Orders of the Sword, and St. John, etc., which said convention has been signed at Petersburg by the above-named plenipotentiaries, after the customary exchange of their full powers in due form, on the 21st of July, 1780; and the said convention being word for word of the same tenor and form as that concluded and signed at Copenhagen, excepting only the second article, in which the stipulations concerning the articles that are to be deemed contraband, are determined and ascertained according to the treaties subsisting between the Court of Sweden and other Powers, it has been thought proper to avoid a repetition of what has already been mentioned, to insert here the second article only, word for word the same as it stands in the treaty concluded and signed at Petersburg, July 21, 1780, between Their Majesties the Empress of Russia and the King of Sweden.

ARTICLE 2

To avoid all errors and misunderstandings with regard to commodities which shall be deemed contraband, Her Majesty the Empress of Russia, and His Majesty the King of Sweden, do hereby declare, that they shall only acknowledge such articles to be contraband commodities as are included and mentioned in the treaties now subsisting between their respective Courts, and the one or the other of the belligerent Powers.

Her Majesty the Empress of Russia conforms herself entirely in this respect to the Articles 10 and 11 of her treaty of commerce with the Court of Great Britain, and extends likewise the engagements of this treaty, which are founded upon the natural rights of nations, to the Courts of France and Spain; which said Courts, until the date of the present convention, have no treaty of commerce with her empire.

His Majesty the King of Sweden, for his part, refers chiefly to the 11th article of this treaty of commerce with the Court of Great Britain, and to the tenor of the preliminary treaty of commerce concluded between Sweden and France in the year 1741; and although the articles that are to be deemed contraband are not expressly ascertained and determined in the last-mentioned treaty, the two Powers having understood to consider each other as *Gens amicissima*, the Court of Sweden has, however, reserved to itself the same advan-

tages which the Hanse Towns enjoy in France since times immemorial until the present period. The advantages which are included in the treaty of Utrecht being fully confirmed, the King has nothing to add thereto. With regard to the Court of Spain, His Swedish Majesty finds himself in the same situation as the Empress of Russia, and following Her Majesty's example, the King likewise extends to the Court of Spain all the engagements of the above-mentioned treaties, as being founded upon the natural rights of nations.

In consequence of this difference in the above article, the two Kings who have joined Her Majesty the Empress of Russia, in this affair, have acceded, as principal contracting Parties, to the treaties and conventions, concluded between them and Her said Imperial Majesty, and to this effect they have signed with their own hand a separate act, which said acts have been exchanged in due form at Petersburg by the Ministers of Her Imperial Majesty.

Their High Mightinesses the States-General of the United Provinces, also acceded to the said convention on the 20th of November, 1780, and under the same conditions, for what concerns the articles of contraband, according to the treaties subsisting between their High Mightinesses and other Powers, which said convention has been signed at Petersburg by their plenipotentiaries on the 5th of January, 1781, with the addition of the following:

ARTICLE 13

For what concerns the command in chief of the naval forces, in case the squadrons or ships of war of the two high contracting Parties should happen to meet, or find it expedient to form a junction, it is hereby stipulated and agreed, that the same shall be obeyed as is customary between crowned sovereigns and the Republic of Holland.

Additional Separate Articles to the Convention for an Armed Neutrality between Russia and Denmark of July 8, 1780¹

ARTICLE 1

As Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway have always been equally interested

¹Translation. French text at Martens, *Recueil de Traité*s, vol. 3, p. 195.

in protecting the security and tranquillity of the Baltic Sea, and in keeping it free from the disturbances of the war and privateering—a system the more just and natural since all the Powers whose States border thereon enjoy the most profound peace,—they have mutually agreed to continue to maintain that it is a closed sea, incontestably such by its situation, on which all nations should and may navigate in peace and enjoy all the advantages of perfect tranquillity, and to adopt to this end among themselves measures capable of guaranteeing this sea and its coasts from all hostilities, piracy, and acts of violence. They will also maintain the tranquillity of the North Sea off their coasts, in so far as the circumstances and the interests of their States may render it necessary.

ARTICLE 2

Their said Majesties, desiring nothing more ardently than the restoration of peace based upon equitable principles, sentiments with which the love of humanity and the desire to prevent the further shedding of blood has inspired them since the beginning of the dissensions which now divide Europe, mutually promise to devote themselves to this same object, to consider the means which may accomplish this purpose, and when the opportunity presents itself, to seize it and to cooperate with sentiments of friendship and of confidence in so salutary an endeavor.

ARTICLE 3

Since the situation of the places makes very short the period during which the fleets of Her Imperial Majesty can operate outside of the Baltic for the protection of neutral commerce on the other seas, His Majesty the King of Denmark and Norway engages to receive in his ports and to treat on absolutely the same footing as his own, all Russian ships or vessels that may enter therein to pass the winter, to furnish them from her warehouses with equipment and provisions of all kinds of which the crew may have need at the same prices at which such equipment and provisions are furnished to the vessels of Her Majesty; in a word, to make all necessary arrangements for the proper care of these vessels and their crews.

ARTICLE 4

If it should be found necessary to join the two squadrons, this will be done in accordance with the principles of perfect equality, and

when one or more vessels happen to be together, that one of the commanding officers who has the higher rank, or in case they are both of the same rank, the one who is senior in that rank, shall take command of the war-ships and frigates of both nations. In general, an effort will be made to arrange the cruising, so far as possible without a formal junction, in such a way as to form a kind of chain and to give each other aid in case of need. As to salutes, they shall always be in conformity with the stipulations of the conventions between the two nations.

ARTICLE 5

At the more or less distant time when peace shall have been restored among the belligerent Powers, Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway shall use their best efforts with the maritime Powers in general to bring about the universal acceptance and recognition in all naval wars which may arise hereafter of the system of neutrality and the principles established in the present convention, forming the basis of a universal maritime code.

ARTICLE 6

As soon as this convention shall be ratified and the exchange of ratifications shall have been made, the high contracting Parties shall take care to communicate it, with the exception of the separate articles, in good faith and conjointly and with one accord, through their Ministers accredited to foreign Courts, and specifically to those which are at present at war. In order that they may proceed uniformly to this end, there is attached hereto the form of the instrument which the respective Ministers shall transmit on this occasion.

These separate articles shall be considered and regarded as forming a part of the convention itself and shall have the same force and effect as though they were inserted word for word in the said convention concluded on the same day between the high contracting Parties. They shall be ratified in the same manner and ratifications shall be exchanged at the same time.

In faith whereof we, the undersigned, by virtue of our full powers, have signed them and affixed thereto the seals of our arms.

Done at Copenhagen, the 9th day of the month of July, in the year of grace one thousand seven hundred and eighty.

[L. S.] P. C. BERNSTORFF

[L. S.] CHARLES D'OSTEN

called SACKEN

[L. S.] O. THOTT

[L. S.] O. SCHACK RATHLOW

[L. S.] J. H. EICKSTEDT

In fidem Concordantiæ

PIERRE DE BACUNIN

Treaty between Great Britain and Denmark, July 21, 1780¹

The two contracting Powers do reciprocally engage, for themselves and their successors, not to assist the enemies of the one or of the other, in time of war, with soldiers, vessels or any kind of goods and merchandise, accounted contraband, as also to prohibit their subjects to do the same, and to punish severely, as infractors of the peace, those, who shall act contrary to prohibitions given to this effect, but that no doubt may be left concerning what is to be understood by the term contraband, it is agreed upon, that by this denomination are only to be understood: fire-arms as well as other kind of weapons and things thereto belonging, as: canons, muskets, morters, petards, bombs, grenades, light-balls, saucisses, carriages, rests, bandollers, powder, match, saltpetre, bullets, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horses, saddles, holsters, belts, and generally all other implements of war, as well as ship-timber, tar, pitch or rosin, copper in sheets, sails, hemp and cordage, and generally every thing which properly serves for the equipment of ships, excepting however unwrought iron, and fir-planks; but it is expressly stipulated, that fish, and flesh, fresh or salted, wheat, flour, corn or other grain, pulse, oil, wine, and generally all that serves for the nourishment and sustenance of life, are not accounted contraband; so that all these articles may always be sold and transported, like other merchandise, even to places, possessed by an enemy to either of the two Crowns, provided, they are not besieged or blocked up.

¹Hennings: *Sammlung von Staatsschriften*, vol. 2, p. 102..

Declaration of the King of Sweden to the Courts of London, Versailles and Madrid, July 21, 1780¹

Ever since the beginning of the present war, the King has taken particular care to manifest his intentions to all Europe. He imposed unto himself the law of a perfect neutrality; he fulfilled all the duties thereof, with the most scrupulous exactitude; and in consequence thereof, he thought himself entitled to all the prerogatives naturally appertaining to the qualification of a sovereign perfectly neuter. But notwithstanding this, his commercial subjects have been obliged to claim his protection, and His Majesty has found himself under the necessity to grant it to them.

To effect this, the King ordered last year a certain number of men of war to be fitted out. He employed a part thereof on the coasts of his kingdom, and the rest served as convoys for the Swedish merchant ships in the different seas which the commerce of his subjects required them to navigate. He acquainted the several belligerent Powers with these measures and was preparing to continue the same during the course of this year, when other Courts, who had likewise adopted a perfect neutrality, communicated their sentiments unto him, which the King found entirely conformable to his own, and tending to the same object.

The Empress of Russia caused a declaration to be delivered to the Courts of London, Versailles, and Madrid, in which she acquainted them of her resolution to protect the commerce of her subjects, and to defend the universal rights and prerogatives of neutral nations. This declaration was founded upon such just principles of the law of nations and the subsisting treaties that it was impossible to call them into question. The King found them entirely concordant with his own cause, and with the treaty concluded in the year 1666, between Sweden and France; and His Majesty could not forbear to acknowledge and to adopt the same principles, not only with regard to those Powers, with whom the said treaties are in force, but also with regard to such others as are already engaged in the present war, or may be involved therein hereafter, and with whom the king has no treaties to reclaim. It is the universal law, and when there are no particular engagements existing, it becomes obligatory upon all nations.

In consequence thereof, the King declares hereby again, "That he

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 185. See also, *Annual Register*, 1780, p. 353.

will observe the same neutrality, and with the same exactitude, as he has hitherto done. He will enjoin all his subjects, under rigorous pains, not to act in any manner whatever contrary to the duties which a strict neutrality imposes unto them; but he will effectually protect their lawful commerce, by all possible means, whenever they carry on the same, conformably to the principles here above mentioned.

**Reply of the Court of London to the Danish Declaration, July 25,
1780¹**

During the whole course of the defensive war which the King has been waging against France and Spain, His Majesty has constantly respected the rights of all friendly and neutral Powers, in accordance with the terms of his different treaties with them and with the clearest and most generally recognized principles of the law of nations, the common law of those nations which have no special conventions.

Such conventions have long existed between Great Britain and Denmark. The flag of His Danish Majesty and the commerce of his subjects have been respected and shall continue so to be, in conformity with the treaties existing between the two nations, which are the foundation and the support of that friendship which has united them for more than a century. Their mutual rights and duties are clearly set forth in these solemn engagements, which would become worthless if they could be changed otherwise than by mutual agreement. They remain in full force at the present time and are equally binding upon both contracting Parties; they constitute an inviolable law for both. The King has followed and will continue to follow it as such with that spirit of equity which has guided all his acts, and with a sincere friendship for the King of Denmark, in the expectation of finding and in the conviction that he will always find in His Danish Majesty similar sentiments and a like conduct.

STORMONT

LONDON, *July 25, 1780.*

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 182. Presented by Mr. Eden on August 7 of the same year.

Reply of France to the Danish Declaration, July 27, 1780¹

The King's reply to the last declaration of the Empress of Russia made known how well calculated are the principles of His Majesty with regard to the freedom of the seas to bring about security and tranquillity for neutral vessels. By his sincere commendation of the views and measures of the Empress of Russia, His Majesty announced in advance to the Powers which this Princess invited to make common cause with her what they might expect from his justice and his love for the general good.

Since the King of Denmark has now made known his determination to uphold a system, the establishment of which is regarded by His Majesty as the greatest benefit that the present war has been able to bring about for Europe, the King hastens to inform His Danish Majesty of his entire approval of the content of the declaration which this Prince has had transmitted to him. The wise and clear laws, whose execution are demanded by the King of Denmark, are in full accord with the provisions and orders of His Majesty at the very beginning of this war, looking to the safeguarding of neutral vessels from all the injuries, to which, according to the law of nations, they should not be exposed. His Majesty recently issued additional orders to the officers of his navy and to privateers carrying his flag not to disturb in any manner neutral navigation; he did not need any instigation to order that Danish vessels in particular should be treated as belonging to a friendly Power which respected the laws of the sea and should enjoy all the advantages of neutrality. His Majesty hopes that the King of Denmark, pursuant to the principles contained in his declaration, will likewise be good enough to reiterate the order to his subjects to conduct themselves in every respect in conformity with the usages which a wise foresight has established to prevent abuse of freedom of navigation. The more favorable a belligerent Power shows itself to be toward a neutral nation, the more scrupulously should the latter keep within the limits prescribed by the law of nations.

His Danish Majesty, by joining with the Empress of Russia and the other Powers that shall embrace the same cause, will aid in establishing for the future the status of neutral vessels, in order that the calamities that follow in the wake of war may be diminished and that

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 180.

the whole of Europe may no longer be made a victim in quarrels which may arise between one or more of the nations of that continent.

The King desires that His Danish Majesty shall reap the full benefit that he expects from his prudence and requests him to rest assured that no wrong will be perpetrated by his subjects on Danish navigators, or, if such a thing should happen, that reparation shall be made with all possible celerity.

His Majesty expresses his most sincere hope that the cooperation of the Powers, which are equally interested in the freedom of the seas, may render immutable laws whose equity he recognizes authoritatively. He is especially pleased to assure the King of Denmark on this occasion of his never-ending desire that the Danish nation shall enjoy the benefit of the sentiments of friendship and confidence which unite the two Courts.

VERSAILLES, *July 27, 1780.*

Convention for an Armed Neutrality between Russia and Sweden, August 1, 1780¹

ARTICLE 1

Their respective Majesties are fully and sincerely determined to keep upon the most friendly terms with the present belligerent Powers and preserve the most exact neutrality; they solemnly declare their firm intention to be, that their respective subjects shall strictly observe the laws forbidding all contraband trade with the Powers now being, or that may hereafter be, concerned in the present disputes.

ARTICLE 2

To prevent all equivocation or misunderstanding of the word contraband, Their Imperial and Royal Majesties declare that the meaning of the said word is solely restrained to such goods and commodities as are mentioned under that denomination in the treaties subsist-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 189. See also, *Annual Register*, 1781, p. 300.

ing between their said majesties and either of the belligerent Powers. Her Imperial Majesty abiding principally by the 10th and 11th articles of the treaty of commerce with Great Britain; the conditions therein mentioned, which are founded on the right of nations, being understood to extend to the Kings of France and Spain; as there is at present no specific treaty of commerce between the two latter and the former. His Danish Majesty, on his part, regulates his conduct in this particular by the first article of his treaty with England, and the 26th and 27th of that subsisting between His said Majesty and the King of France, extending the provisions made in the latter to the Catholic King; there being no treaty *ad hoc*, between Denmark and Spain.

ARTICLE 3

And whereas by this means the word *contraband*, conformable to the treaties now extant and the stipulations made between the contracting Powers and those that are now at war, is fully explained; especially by the treaty between Russia and England of the 20th of June, 1766; between the latter and Denmark, of the 11th of July, 1670; and between Their Danish and most Christian Majesties, of August 23, 1742; the will and opinion of the high contracting Powers, are, that all other trade whatsoever shall be deemed and remain free and unrestrained.

By the declaration delivered to the belligerent Powers, Their contracting Majesties have already challenged the privileges founded on natural right, whence spring the freedom of trade and navigation; as well as the right of neutral Powers; and being fully determined not to depend in future merely on an arbitrary interpretation, devised to answer some private advantages or concerns, they mutually covenanted as followeth:

(1) That it will be lawful for any ship whatever to sail freely from one port to another, or along the coast of the Powers now at war.

(2) That all merchandise and effects belonging to the subjects of the said belligerent Powers, and shipped on neutral bottoms, shall be entirely free; except contraband goods.

(3) In order to ascertain what constitutes the blockade of any place or port, it is to be understood to be in such predicament, when the assailing Power has taken such a station, as to expose to imminent danger, any ship or ships that would attempt to sail in or out of the said ports.

(4) No neutral ships shall be stopped without a material and well-grounded cause; and in such cases justice shall be done to them without loss of time; and besides indemnifying, each and every time, the party aggrieved, and thus stopped without sufficient cause, full satisfaction shall be given to the high contracting Powers, for the insult offered to their flag.

ARTICLE 4

In order to protect officially the general trade of their respective subjects on the fundamental principles aforesaid, Her Imperial, and His Royal Majesty have thought proper, for effecting such purpose, each respectively to fit out a proportionate rate of ships of war and frigates. The squadron of each of the contracting Powers shall be stationed in a proper latitude, and shall be employed in escorting convoys according to the particular circumstances of the navigators and traders of each nation.

ARTICLE 5

Should any of the merchantmen belonging to the subjects of the contracting Powers, sail in a latitude where shall be no ships of war of their own nation, and thus be deprived of the protection; in such case, the commander of the squadron belonging to the other friendly Power shall, at the request of said merchantmen, grant them sincerely, and *bona fide*, all necessary assistance. The ships of war and frigates, of either of the contracting Powers, shall thus protect and assist the merchantmen of the other: provided nevertheless, that under the sanction of such required assistance and protection, no contraband be carried on, nor any prohibited trade, contrary to the laws of the neutrality.

ARTICLE 6

The present convention can not be supposed to have any relative effect; that is to extend to the differences that may have arisen since its being concluded: unless the controversy should spring from continual vexations which might tend to aggrieve and oppress all the European nations.

ARTICLE 7

If, notwithstanding the cautious and friendly care of the contracting Powers, and their steady adherence to an exact neutrality, the

Russian and Danish merchantmen should happen to be insulted, plundered, or captured by any of the armed ships or privateers belonging to any of the belligerent Powers: in such case the ambassador or envoy of the aggrieved party, to the offending Court, shall claim such ship or ships, insisting on a proper satisfaction, and never neglect to obtain a reparation for the insult offered to the flag of his Court. The minister of the other contracting Power shall at the same time, in the most efficacious and vigorous manner, defend such requisition, which shall be supported by both parties with unanimity. But in case of any refusal, or even delay in redressing the grievances complained of; then Their Majesties will retaliate against the Power that shall thus refuse to do them justice, and immediately agree together on the most proper means of making well-founded reprisals.

ARTICLE 8

In case either of the contracting Powers, or both at the same time, should be in any manner aggrieved or attacked, in consequence of the present convention, or for any reason relating thereto; it is agreed, that both Powers will join, act in concert for their mutual defense, and unite their forces in order to procure to themselves an adequate and perfect satisfaction, both in regard to the insult put upon their respective flags, and the losses suffered by their subjects.

ARTICLE 9

This convention shall remain in force for and during the continuance of the present war; and the obligation enforced thereby, will serve as the ground-work of all treaties that may be set on foot hereafter; according to future occurrences, and on the breaking out of any fresh maritime wars which might unluckily disturb the tranquillity of Europe. Meanwhile all that is hereby agreed upon shall be deemed as binding and permanent, in regard both to mercantile and naval affairs, and shall have the force of law in determining the rights of neutral nations.

ARTICLE 10

The chief aim and principal object of the present convention being to secure the freedom of trade and navigation, the high contracting Powers have antecedently agreed, and do engage to give to all other

neutral Powers free leave to accede to the present treaty, and, after a thorough knowledge of the principles on which it rests, share equally in the obligations and advantages thereof.

ARTICLE 11

In order that the Powers now at war may not be ignorant of the strength and nature of the engagements entered into by the two Courts aforesaid; the high contracting Parties shall give notice, in the most friendly manner, to the belligerent Powers, of the measures by them taken; by which, far from meaning any manner of hostility, or causing any loss or injury to other Powers, their only intention is to protect the trade and navigation of their respective subjects.

ARTICLE 12

This convention shall be ratified by the contracting Powers, and the ratifications interchanged between the Parties in due form, within the space of six weeks, from the day of its being signed, or even sooner, if possible. In witness whereof, and by virtue of the full powers granted us for the purpose, we have put our hands and seals to the present treaty.

Done at Copenhagen, July 21, 1780.

(Signed) CHARLES D'OSTEN (Called SACKEN)
O. THOTT
J. SCHACK RATHLOW
H. EICKSTEDT
A. P. BERNSTORFF

Acceded to, and signed by the plenipotentiaries of the Court of Sweden, at Petersburg, July 21, 1780, and by the States-General accepted November 20, 1780, and signed at Petersburg, January 5, 1781, with the addition only of

ARTICLE 13

If the respective squadrons, or ships of war, should meet or unite, to act in conjunction, the command in chief will be regulated according to what is commonly practised between the crowned heads and the Republic.

Additional Separate Articles to the Convention for an Armed Neutrality between Russia and Sweden of August 1, 1780¹

[These six articles are word for word of the same tenor as those between Russia and Denmark, except that to Article 3 between Russia and Sweden there is added:] Her Imperial Majesty undertakes the same obligations with respect to His Majesty the King of Sweden, and her commanding officers in the ports of the Baltic Sea shall consequently have orders to follow the same procedure in the case of Swedish war-ships and all Swedish vessels, when they are so requested.

**Reply of the Court of London to the Swedish Declaration,
August 3, 1780²**

Throughout the entire course of the war in which Great Britain finds herself engaged as a result of the aggression of France and Spain, the King has invariably followed those principles of justice and equity which guide all his actions. He has faithfully fulfilled all his engagements with respect to friendly and neutral Powers. The flags of these Powers and the commerce of their subjects have been respected in conformity with the terms of these engagements.

Those existing between Great Britain and Sweden are clear and formal and furnish a direct reply to the declaration which Baron de Nolken has transmitted by the express orders of the Court.

The 12th article of the treaty of 1661 fixing the form of certificate with which vessels must be provided gives the following reason therefor:

Ne vero libera ejusmodi navigatio, aut transitus foederati unius, ejusque subditorum ac incolarum, durante bello alterius foederati, terra marive cum aliis gentibus, fraudi sit alteri confoederato, mercesque et bona hostilia occultari possint.

The same article contains a precise and formal stipulation, namely:

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 205.

²Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 188.

Si hostis bona in confoederati navigio reperiantur, quod ad hostem pertinet, praedae solummodo cedat, quod vero ad confoederatum illico restituatur.

The treaty of 1666 prescribes the same certificate and gives the same reasons therefor.

Such are the engagements binding the two nations, which can not be violated without impairing the friendship which has so long existed between them and of which these engagements are the foundation and support.

Treaties can be changed only by mutual agreement of the contracting Parties, and as long as they are in force, they are equally binding upon both.

The King shall, therefore, follow his engagements with Sweden as a sacred and inviolable law, and he shall maintain it as such.

Reply of the Court of France to the Swedish Declaration, August 4, 1780¹

The King has constantly desired that neutral Powers should receive no injury in the war in which His Majesty is engaged. His orders have ensured to the vessels belonging to these Powers enjoyment of all the freedom allowed them by the laws of the sea, and if some individual navigators have had cause for complaint in that they have suffered by act of subjects of His Majesty, they have received prompt and equitable justice.

His Majesty has seen with satisfaction in the declaration transmitted to him in the name of the King of Sweden that the intention of this Prince was to continue to protect the navigation of his subjects against all violence, that His Swedish Majesty had even resolved to take measures in concert with other Courts, and particularly with the Empress of Russia, for the more effectual attainment of this end. The King can only express the hope that the cooperation of His Swedish Majesty with these Powers may bring about the good re-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 186.

sults which they intend, that the sea may be free, in conformity with the law of nations and with treaties, which are recognized as being merely an explanation of that law; that, finally, all nations which are not taking part in the war may not suffer from its evils.

His Majesty has repeated to the officers of his navy and to the privateers that carry his flag, orders in accord with the principles upon which the security and tranquillity of all neutral vessels must rest. With still more reason the subjects of the King of Sweden must be assured that they will suffer no mishap at the hands of the subjects of His Most Christian Majesty, since no Frenchman is ignorant of the alliance and friendship which have long existed between the two Crowns.

Inasmuch as the precautions taken by His Swedish Majesty will keep Swedish navigators within the bounds of the strictest neutrality, this will be a further reason for them to insist upon the execution of the laws of which their Master shows himself to be the zealous protector, laws which the King ardently hopes to see adopted by the unanimous cooperation of all the Powers, so that none may have to suffer from the war if the sovereign takes no part therein, when he shall have conformed to the rules prescribed for the prevention of the abuse of the neutral flag.

VERSAILLES, *August 4, 1780.*

Reply of the Court of Spain to the Danish Declaration, August 7, 1780¹

His Catholic Majesty, in the reply which he had made to the declaration that the Express of Russia presented to him through her Minister residing at his Court, in all respects similar to that which by order of the said sovereign was presented to the other belligerent Courts, declared in the most positive terms that his views with regard to the rights of neutral nations in their navigation and commerce were entirely in accord with those of Her Imperial Majesty, and the or-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 183.

ders immediately given to observe with respect to vessels under the Russian flag a course of conduct and a manner of treatment in conformity with the principles which the said Princess declared it to be her desire to follow and uphold, are a proof of the sincerity and the good faith with which the King is acting; and so is the promptness with which he ordered the same provisions in favor of Dutch vessels, as soon as the States-General declared their adhesion to the system of the Court of Russia. Now that the King of Denmark (by a declaration signed by his Minister of State on July 8 last) has formally announced that his principles with respect to the rights and freedom which neutral nations should enjoy in their lawful commerce in time of war are those which the Court of St. Petersburg has adopted and which His Majesty is likewise determined to uphold in favor of the Danish flag and the free navigation of his subjects, His Catholic Majesty does not for a moment hesitate to accept this explanation of His Danish Majesty and to declare that at the very outset he gave orders that the same rules be observed with regard to Danish vessels as with Russian and Dutch ships. Consequently the said vessels shall not be arrested by the commanders of his royal fleets, nor by the captains of privateers that may encounter them at sea, although they may have on board effects belonging to the enemies of Spain, provided they be not such effects as have been declared by general treaties contraband in time of war, and these vessels shall be shown every possible consideration in the matter of the notification and observance of the declaration of March 13 of the present year, pertaining to the blockade of Gibraltar, of which Denmark was notified, it being understood that those attempting to sail to that port shall be exposed to the peril set forth in Article 4 of the said declaration. But the Catholic King, in following this line of action, can not doubt that Denmark and the other Powers that have determined or shall determine to uphold their rights and to defend the freedom of their flags shall be likewise impartial in appraising and in responding in kind to the conduct adopted toward them by the Powers at war, as they are obliged to do by their own system and the just maxims which have been so openly adopted.

ST. ILDEPHONSO, *August 7, 1780.*

(Signed) COUNT DE FLORIDA-BLANCA

Declaration of September 7, 1780, by which His Danish Majesty accedes to the Convention of August 1, 1780, between Russia and Sweden¹

Christian VII, by the grace of God, King of Denmark, Norway, the Vandals and the Goths, Duke of Schleswig-Holstein, Stomarn, Ditmarsen and Oldenburg, etc., etc., make known that, having been invited to accede as a principal contracting party to the convention concluded and ratified on July 21/August 1, 1780, at St. Petersburg, between Her Majesty the Empress of all the Russias and His Majesty the King of Sweden, similar in all respects to the convention concluded between us and Her said Imperial Majesty, and signed at Copenhagen on July 9, 1780. We formally certify by this declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form as a contracting party to the aforesaid convention, and we bind ourself and our successors by all the stipulations contained in its clauses and articles, as well as in the six separate articles thereto annexed, and we likewise accede entirely to the form and tenor thereof. We understand that Her Majesty the Empress of all the Russias and His Majesty the King of Sweden will likewise declare by a formal instrument the receipt and acceptance of this our declaration and will recognize us as a principal contracting party with respect to the said convention; and as His Majesty the King of Sweden, having been invited likewise, has also acceded in the same manner and in the same sense to the exactly similar convention concluded between us and Her Majesty the Empress of all the Russias, and signed at Copenhagen on July 9, 1780. We solemnly declare that we accept his accession and that we recognize His Swedish Majesty as a principal contracting party of that convention and of the six separate articles thereto annexed. In faith of which we have signed the present act of accession and of acceptance with our own hand and have thereto affixed the great seal of our Crown.

Done and given at our Castle of Fredensburg, this 7th day of the month of July [September?], in the year of grace one thousand seven hundred and eighty, and of our reign the fifteenth.

CHRISTIAN R.

A. V. BERNSTORFF

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 207.

Declaration of September 9, 1780, by which His Majesty the King of Sweden accedes to the Convention of July 9, 1780, between Russia and Denmark¹

Gustavus, by the grace of God, King of Sweden, of the Goths and the Vandals, etc., etc., etc., heir to Norway, Duke of Schleswig-Holstein, of Stormaria and of Ditmarsen, Count of Oldenburg and of Delmenhorst, etc., etc., make known that, having been invited to accede, as a principal contracting party, to the convention concluded and ratified on July 9 of the present year at Copenhagen, between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark, in all respects similar to the convention concluded between Her said Imperial Majesty, signed at Petersburg on July 21/ August 1 of the present year and ratified by us on the 9th of September following, we formally certify by this present declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form, as a principal contracting party, to the said convention; and we bind ourself and our successors by all the stipulations contained in the clauses and separate articles thereto annexed, and we likewise accede entirely to the form and tenor thereof. We understand that Her Imperial Majesty of all the Russias and His Majesty the King of Denmark will likewise declare, by a formal instrument, that they have received and accepted this our declaration and will recognize us as a principal contracting party with regard to the said convention; and as His Majesty the King of Denmark, having been invited likewise, has also acceded in the same manner and in the same sense to the exactly similar convention concluded between us and Her Majesty the Empress of all the Russias, and signed at St. Petersburg on July 21/ August 1 of the present year, we solemnly declare that we accept his accession and that we recognize His Danish Majesty as a principal contracting party of that convention and of six separate articles thereto annexed. In faith whereof we have signed this present act of accession with our own hand and have affixed thereto our Royal seal.

Done and given at Spa, September 9, 1780.

GUSTAVUS

U. G. FRANC

¹Translation. French text at Martens, *Recueil de Traité*s, vol. 3, p. 205.

Resolution of the Continental Congress of the United States regarding Accession to the Principles contained in the Declaration of the Empress of Russia, October 5, 1780¹

Congress took into consideration the report of the committee on the motion relating to the propositions of the Empress of Russia; and thereupon came to the following resolutions:

Her Imperial Majesty of all the Russias, attentive to the freedom of commerce, and the rights of nations, in her declaration to the belligerent and neutral Powers, having proposed regulations, founded upon principles of justice, equity, and moderation, of which Their Most Christian and Catholic Majesties and most of the neutral maritime Powers of Europe, have declared their approbation;

Congress, willing to testify their regard to the rights of commerce, and their respect for the sovereign, who hath proposed and the Powers that have approved the said regulations:

Resolved, That the Board of Admiralty prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias, on the rights of neutral vessels:

That the Ministers Plenipotentiary from the United States, if invited thereto, be and hereby are respectively empowered to accede to such regulations, conformable to the spirit of the said declaration, as may be agreed upon by the Congress expected to assemble in pursuance of the invitation of Her Imperial Majesty.

Ordered, That copies of the above resolutions be transmitted to the respective Ministers of the United States, at foreign Courts, and to the honourable the Minister Plenipotentiary of France.

¹*Journals of the Continental Congress* (Washington, 1910), vol. 18, p. 905; Wharton, *Diplomatic Correspondence of the American Revolution*, vol. 4, p. 80.

Memorandum of the Court of Russia presented to the Courts of the Belligerent Powers to notify them of the Accession of Denmark and Sweden to the System of Armed Neutrality, November 7, 1780¹

The undersigned, Envoy, etc., has received instructions from his Court to communicate to the Court of a convention drawn up and signed at St. Petersburg on June 28/July 9 between Her Imperial Majesty of all the Russias, his sovereign, and His Majesty the King of Denmark and Norway, July 21/August 1 between Her Imperial Majesty and His Majesty the King of Sweden, which has for its sole and only object the maintenance of the rights and liberties belonging to every neutral nation. Anxious to perform his duty, he requests the Minister of His Majesty kindly to bring it to the knowledge of the King. His Majesty will find in all the clauses and articles of this treaty an expression of the principles of perfect impartiality and neutrality, as well as of the sentiments of justice and equity which constantly guide the Empress, his sovereign, and which have decided her to adopt measures calculated to protect her subjects from the losses, vexations, and dangers, to which they, their commerce and their navigation might be exposed as the unfortunate result of the naval war which is disturbing the tranquillity of Europe.

The Empress is pleased to believe from the friendship and the spirit of justice with which His Majesty is animated that he will recognize the equity and peaceful intent of this convention, and that he will ensure the execution of the orders which he has had sent to all his officers and commanders of his war-ships, as well as to his ship-owners, to respect the rights and liberties of neutral nations, just as Her Imperial Majesty has provided measures to prevent her subjects from engaging in illicit commerce to the detriment of either of the Powers at war.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 208.

**Resolution of the States-General of the Netherlands regarding
Their Accession to the System of Armed Neutrality, November
20, 1780¹**

Consideration having been given to a communication from Messrs. van Waffenaar and van Heeckeren, Ministers Plenipotentiary of the States-General of the Netherlands to the Court of Russia, written at St. Petersburg on September 15, last, and received here on October 2, following, giving an account of their conference with Count Panin and Vice Chancellor Count van Osterman upon the subject of their commission, and accompanied by a copy of a convention and some separate articles, together with a draft of the accession in the form in which the States-General shall sign it, all of which is referred to at length in the above-mentioned communication and in the report of October 2 last:

It stands approved and agreed that the States-General's Ministers Plenipotentiary at the Court of St. Petersburg shall be directed and authorized, and by this resolution they are authorized, in the name of the States-General of the Netherlands to accede to the twofold convention of that Court with their Majesties the Kings of Sweden and of Denmark, concluded on July 9 and July 21 at Copenhagen and St. Petersburg respectively, and to accept, on the part of the States-General of the Netherlands, the separate articles thereof and the obligations therein stated, for the enjoyment of the advantage thereby contracted, as if the conventions had been entered into and concluded, word for word, between the States-General of the Netherlands and each of the contracting Powers as principal contracting Parties, with reasons established this day in the declarations of the States-General addressed to the belligerent Powers; and within six weeks of the date of this resolution of the States-General, to conform fully to and solemnly to accept that which Her Imperial Russian Majesty and the Kings of Sweden and Denmark have stipulated in their declarations to the belligerent Powers, and with regard to contraband merchandise, to conform to that which has been stipulated in the treaties concluded between the States-General and the belligerent Powers, and more especially in Article 6 of their maritime treaty with Spain of December 17, 1650, in Article 3 of their maritime treaty with Great Britain of December 1, 1674, and Article 16 of the commercial,

¹Translation. Dutch text at Martens, *Recueil de Traités*, vol. 3, p. 211.

naval and maritime treaty with France, of December 21, 1739, concluded for the period of twenty-five years. The States-General consider the disposition and the determination of contraband merchandise given thereby as perfectly founded upon the law of nations and accept them unreservedly; and they confer the further authorization upon the above-mentioned Ministers Plenipotentiary to draft for Her Imperial Russian Majesty and Their Royal Majesties, acts regarding the above-mentioned accession and acceptance, embodying in the most friendly tone the fullest obligations, and to transmit the said acts to the above-mentioned Courts, with the request that the necessary acts of acceptance of the above-mentioned accession on the part of the States-General be delivered to them^s in turn.

In consequence of the above-mentioned resolution regarding accession to the above-mentioned convention it is further resolved that within the above-mentioned period of six weeks from the date of this resolution of the States-General, declarations as adopted by the above-mentioned Courts, conformable to the style of those of Her Imperial Russian Majesty and of Their Royal Majesties of Sweden and of Denmark regarding the protection which the States-General intend to extend to the commerce and navigation of their citizens, shall be sent to the Courts of Great Britain, France and Spain. These declarations shall define the character of contraband merchandise and repeat the principles construed in the declaration of Her Imperial Russian Majesty and accepted by the States-General. The necessary orders shall be sent to Mr. Lestevenon van Berkenrode, the States-General's Ambassador at the Court of France, and to Counts van Welderen and van Rechteren, Envoys Extraordinary and Plenipotentiary at the Courts of Great Britain and of Spain respectively, informing them at once of the time when the above-mentioned declaration shall be communicated to each of the belligerent Powers. A copy of the declaration itself shall be sent to the above-mentioned Ministers Plenipotentiary, to acquaint Her Imperial Russian Majesty's Ministry thereof; a copy of the declaration shall be left with the said Ministry, and other copies sent to Messrs. van Lynden and Bosc de la Calmette, the States-General's Envoys Extraordinary at the Courts of Sweden and Denmark; other copies still shall be sent to Mr. Smisart, the States-General's Minister at the Court of Portugal, and to Mr. van Heiden, the States-General's Envoy Extraordinary and Plenipotentiary at the Court of Prussia, the former being

rendered necessary to perfect accession to the above-mentioned convention, and the latter having informed the Ministry of Russia of acceding to the convention in that manner, so that both may make communication to that effect to the Courts whereto they are accredited; and, lastly, copies of the treaty of commerce with Spain in 1650 and with France in 1739 shall, as expressly requested by them, be sent to the Ministers Plenipotentiary at Petersburg.

The honorable deputies of the Provinces of Gelderland, Utrecht, Vriesland, Overysse, of the town of Groningen and rural Ommelanden have accepted the resolutions of the States-General, their superiors, introduced from time to time upon this subject, and those of Holland and West Vriesland, that of the States-General, their superiors, with regard to the time of notifying the declaration to the belligerent Powers.

The honorable deputy of the province of Zealand who was present declared that as the members had knowledge of the fact that the resolution of the States-General, his superior, of the third of this month, here introduced, was against the sentiment of the majority of the other provinces, he had hoped that the said members would be willing to postpone adopting a conclusion, believing that, according to the union, no conclusion could be reached by a majority for the making of conventions, alliances or treaties. But the other provinces having proceeded to a conclusion, he had accepted, under protest, the consequences which might result, leaving them to the responsibility of the other provinces.

Reply of France, December 12, 1780, to the Notification from Her Majesty the Empress of Russia of the Accession of Denmark and Sweden to the System of Armed Neutrality¹

The King feels highly flattered by the confidence with which the Empress of all the Russias communicates to him the convention signed at Copenhagen on July 9 last between Her Imperial Majesty and

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 209.

the King of Denmark, and at St. Petersburg on July 21/August 1 last between Her said Imperial Majesty and the King of Sweden.

His Majesty has recognized with pleasure that this convention contains the most appropriate measure to ensure the freedom of the seas and the immunity of the flag of neutral Powers. The declarations of His Majesty in this respect, both to Her Majesty the Empress of all the Russias and to Their Danish and Swedish Majesties; the order that he has given to the officers of his fleet and to all his privateers; and the care that he is taking to ensure their execution must convince Her Imperial Majesty that the object of the said convention will be entirely fulfilled by all captains flying the French flag. His Majesty has had many opportunities during the past three years to make known to his subjects and to Europe that the happiness and prosperity of neutral nations, and of the Russian nation in particular, have entered in no small measure in the calculations of his policy and in his military projects. He hopes that his efforts and his example will help to strengthen the system which has brought into being and is extending from day to day the association of neutral Powers. His hopes will be fulfilled if there results from this system a diminution of the evils of war and the assurance that princes and peoples who observe a strict neutrality shall never suffer injury from war.

VERSAILLES, *December 12, 1780.*

DE VERGENNES

Act of January 4, 1781, by which the States-General of the Netherlands Accede to the Conventions for an Armed Neutrality concluded July 9 and August 1, 1780, between Russia and Denmark, and Russia and Sweden¹

The solicitude of Her Imperial Majesty of all the Russias for the maintenance of the interests and the rights of her subjects having led her to give solid and permanent stability to a just and reasonable system of neutrality at sea, and to contract to this end a formal agreement with His Majesty the King of Denmark and of Norway, which was

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 215.

followed immediately by a similar one with His Majesty the King of Sweden, has animated Their High Mightinesses the Lords States-General of the United Provinces to accept the invitation of Her Imperial Majesty and to adopt principles in conformity with those set forth in her declaration and in those of the aforesaid Powers. To this end they have determined, not only to manifest in a formal declaration, which was recently transmitted to the Powers now at war, their point of view, similar to that of the Empress and the two Kings, her Allies, but also to take part directly and effectively, as principal contracting Parties, in the stipulations contracted among them for the protection of the innocent navigation of their respective subjects.

As a result of this determination of Their High Mightinesses, and by virtue of Article 10 of the double maritime convention of Copenhagen and of St. Petersburg, in which it is stated :

The chief aim and principal object of the present convention being to secure the freedom of trade and navigation, the high contracting Powers have antecedently agreed, and do engage to give to all other neutral Powers free leave to accede to the present treaty, and, after a thorough knowledge of the principles on which it rests, share equally in the obligations and advantages thereof.

Her Imperial Majesty of all the Russias, in concert with Their Majesties the Kings, her Allies, had even less hesitation in entering into negotiations with Their High Mightinesses, both in her own behalf and in behalf of her two Allies, whose desires and views had been entrusted to her, since Their High Mightinesses saw fit to send to her, for this purpose, an embassy extraordinary, instructed to make known in their name how agreeable to them was the invitation of the Empress, and to form the proposed union between the Crowns of the North and the United Provinces.

To accomplish this desired and salutary object, Her Imperial Majesty has appointed as her plenipotentiaries, Nikita Count Panin, her Privy Councilor, Senator, Chamberlain, and Chevalier of the Orders of St. Andrew, St. Alexander Newsky, and St. Anne, John Count d'Osternann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander Newsky and St. Anne, John Count d'Osternann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander Newsky and St. Anne, Alexander de Bezborodko, Major General of her Armies, and Colonel commanding

the Kiovia Regiment of Militia of Little Russia, and Pierre de Baconin, her Councilor of State, member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne; Their High Mightinesses having charged with their full powers William Louis Baron de Wessenaer, Lord of Starrenburg, of the Body of Nobles of the Province of Holland and of Westfrieze, Steward of Rhyndland, ordinary Deputy of the said Province in the Assembly of the States-General, and Ambassador Extraordinary and Plenipotentiary of Their High Mightinesses to the Imperial Court of Russia; Theodore John Baron de Heeckeren, Lord of Brantzenburg, ordinary Deputy in the Assembly of the States-General, representing the First Order of the Province of Utrecht, and their Ambassador Extraordinary and Plenipotentiary at the Imperial Court of Russia; and John Isaac de Swaart, Resident of Their High Mightinesses at the same Court; who, after having exchanged their full powers, found to be in good and due form, have decided and concluded that the entire twelve articles of the two conventions of the same content concluded at Copenhagen on June 28/July 9, 1780, between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway, and at St. Petersburg on July 21/August 1, 1780, between Her Imperial Majesty * * * ¹ their clauses and obligations, with the exception of the changes therein, resulting from the nature of the different treaties and engagements existing between the high contracting Parties and either of the Powers now at war, as set forth in Articles 2 and 3 of the double maritime convention of Copenhagen and of St. Petersburg, above indicated, must be regarded as if they had been made, concluded and established, word for word between Her Imperial Majesty of all the Russias and Their High Mightinesses, as principal contracting Parties, with the express reservations that the said Articles 2 and 3 of the aforesaid conventions be particularly adapted to the former engagements of Their High Mightinesses with regard to merchandise and contraband. With respect to such merchandise they declare it to be their desire to hold strictly to the stipulations of the treaties concluded between themselves and the belligerent Powers, and specifically in the sixth article of the marine treaty with the Crown of Spain, of December 17, 1650, the third article of their Treaty with the Crown of Great Britain, of December 1, 1674, and the sixteenth

¹Apparent omission.

article of their Treaty of commerce, navigation and marine with the Crown of France, concluded on December 21, 1739, for the period of twenty-five years, whose provisions and specifications on the subject of contraband Their High Mightinesses extend indefinitely, as being founded on the law of nature and of nations.

In order to prevent any inaccuracy, the plenipotentiaries of Her Imperial Majesty shall hand to those of Their High Mightinesses certified copies of the two conventions of Copenhagen and of St. Petersburg, which shall be regarded as having been inserted word for word in the present act.

Ratifications of this act of accession, concluded between Her Imperial Majesty of all the Russias, and Their High Mightinesses of the States-General, shall be furnished and exchanged here in St. Petersburg within the period of two months, or sooner if possible.¹ It has likewise been agreed that on the occasion of this exchange of ratifications, Their High Mightinesses shall have transmitted two uniform declarations, for Their Majesties the two Kings allied with the Empress, in the form hereto annexed,² which, through the intermediary of the Minister of Russia are to be exchanged for those of Their aforesaid Majesties, in virtue of which these two Sovereigns and the Lords States-General accept forthwith among themselves the mutual stipulations hereinbefore set forth.

In faith whereof we the undersigned, by virtue of our full powers, have signed and affixed hereto the seals of our arms.

Done at St. Petersburg, December 24, 1780.³

[L. S.] COUNT DE PANIN

[L. S.] COUNT J. D'OSTERMANN

[L. S.] ALEXANDER DE BEZBORODKO

[L. S.] PIERRE DE BACOUNIN

[L. S.] B. DE WASSENAER

[L. S.] B. DE HEEKEREN

[L. S.] J. J. DE SWAART

¹Ratifications of this act were exchanged at St. Petersburg on February 12, 1781, by the same plenipotentiaries who signed it.

²Not printed.

³January 4. 1781, new style.

Separate Act of January 4, 1781, of Accession of the Netherlands to the Conventions for an Armed Neutrality concluded July 9 and August 1, 1780, between Russia and Denmark, and Russia and Sweden¹

The six separate articles forming a part of the double convention of Copenhagen and of St. Petersburg, with the exception of the first article, which contains a special arrangement between the Empire of Russia and the two Crowns of Denmark and of Sweden with regard to the tranquillity of the Baltic Sea, must be considered and regarded as though they had been inserted word for word in the act of accession of Their High Mightinesses to the double convention of Copenhagen and of St. Petersburg, signed here in St. Petersburg this same day. To elucidate and to explain the fourth of these separate articles relating to a provisional arrangement between the two high contracting Powers in the event of the joining of their squadrons, it has been agreed with regard to the authority of the commanding officer, to follow the etiquette generally accepted between Crowned Heads and the Republic.

In faith whereof, we the undersigned, by virtue of our full powers, have signed and affixed hereto the seal of our arms.

Done at St. Petersburg, December 24, 1780.²

[L. S.] COUNT PANIN

[L. S.] COUNT JOHN D'OSTERMANN

[L. S.] ALEXANDER DE BESBORODKO

[L. S.] PIERRE DE BACOUNIN

[L. S.] B. WASSENAER

[L. S.] B. VAN HEECKEREN

[L. S.] J. J. SWAART

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 219.

²January 4, 1781, new style.

**Declaration of the States-General of the Netherlands relative to
Their Accession to the Conventions for an Armed Neutrality
between Russia and Denmark, and Russia and Sweden, Janu-
ary, 1781¹**

We make known that, having been invited to accede, as principal contracting Parties, to the double convention concluded at Copenhagen on June 28/July 9 between Her Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway, and at St. Petersburg on July 21/August 1, 1780, between Her Imperial Majesty of all the Russias and His Majesty the King of Sweden, we formally certify by this present declaration that, having equally at heart the maintenance of the general freedom of neutral commerce and navigation, and being animated in this respect by the same sentiments as Their said Majesties, we accede in all due form, as a principal contracting Party, to the aforesaid double convention, and we bind ourselves in conformity with what has been more fully stated in the act of accession and the separate act signed on December 24, 1780, at St. Petersburg by the plenipotentiaries of Her Imperial Majesty and by those who have been authorized by us, by all the stipulations, clauses, and articles, to which we accede entirely in their form and tenor.

We understand that Her Imperial Majesty of all the Russias and Their Majesties the Kings of Denmark and of Sweden will declare likewise by a formal act that they have received and accepted this our declaration, and that Their Imperial and Royal Majesties will recognize us as a principal contracting Party to the double convention of Copenhagen and of St. Petersburg.

In faith whereof this present declaration, which shall be exchanged at St. Petersburg for a similar acceptance on the part of His Majesty the King of Denmark and Norway [Sweden] through the intermediary of Russia, has been given at The Hague, under the Great Seal of our States and initialed by the President of the Assembly and signed by our Clerk.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 220.

Declaration of the States-General of the Netherlands to the Courts of the Belligerent Powers, to notify Them of Their Accession to the Conventions for an Armed Neutrality between Russia, and Denmark, and Russia and Sweden, January, 1781¹

Article 10 of the double Convention of Copenhagen and of St. Petersburg having been communicated to the Court of London (*Versailles, Madrid*), announcing the consent of the high contracting Parties to the accession of other neutral Powers; Their High Mightinesses the Lords States-General of the United Provinces have determined to form, in concert with Her Imperial Majesty of all the Russias and Their Majesties the two Kings, her allies, a union founded on a just and reasonable system of neutrality on the sea, having for its object the maintenance of the interests and the rights of their subjects. To this end they have acceded as principal contracting Parties, by a formal act signed at St. Petersburg on December 24, 1780, to the conventions of Copenhagen and of St. Petersburg, concluded on June 28/July 9 and July 21/August 1, 1780, between Her Imperial Majesty of all the Russias and Their Majesties the Kings of Denmark and of Sweden.

The undersigned Ambassador (*Envoy*) having the honor to communicate this act to the Minister of His Britannic (*Most Christian, Catholic*) Majesty requests him to be good enough to bring it to the knowledge of the King his master. His Majesty will find therein a renewed expression of the principles of impartiality, which Their High Mightinesses have constantly professed and which are so in accord with the sentiments of justice and equity which have decided them to adopt the only means calculated to protect their subjects from the losses, vexations and dangers, to which they, their commerce, and their navigation might be exposed as an unhappy consequence of the naval war which is disturbing the tranquillity of Europe.

Their High Mightinesses are pleased to believe, because of the friendship and spirit of justice with which His Britannic (*Most Christian, Catholic*) Majesty is animated, that he will recognize the equity and peaceful intention of such a measure and that he will see to the execution of the orders which he has had issued to all the officers and commanders of his war-ships, as well as to his private ship-owners, to respect the rights and liberties of neutral nations, just as Their High

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 221.

Mightinesses have provided that the subjects of the Republic shall not engage in illicit commerce to the detriment of any of the Powers at war.

Extract from the Register of Resolutions of the States-General of the Netherlands, regarding the System of Armed Neutrality, January 12, 1781¹

VENERIS, *January 12, 1781.*

Upon the proposition of the honorable deputies of the Provinces of Holland and of West Vriesland, and upon the special order of the States-General of the said Provinces in their Assembly, after due deliberation it has been determined and agreed upon, that to the Ministers Plenipotentiary of the States-General at Petersburg, as well as to the Envoys and Ministers von Lynden, Bosc de la Calmette, at the Courts of Stockholm and Copenhagen, instructions shall be sent, **there** and as they may deem most convenient, to make substantial notification to the effect that the States-General by resolution of November 20, last, whereof they were notified in due time, joined the alliance for the maintenance of the rights of neutrality so worthily established by Her Imperial Russian Majesty, and trust that the alliance is thereby perfected, and that therefore, the convention between the Ministers of the Imperial Russian Majesty, and Their Majesties the Kings, to whose Courts each of them is accredited, and the Ministers of the States-General sent in special mission to Petersburg for that purpose, is concluded and signed, and that the ratifications of the conventional Powers will not fail, but be speedily executed; that at least there will be no difficulty encountered to fulfil the engagements made with the Ministers Plenipotentiary of the States-General; that from the moment when the State should have delivered its declaration to the belligerent Powers, the State should be regarded as having joined the convention, and therefore, from that moment share its advantages, if any untoward event should arise between the time of the declaration and the conclusion of the convention.

¹Translation. Dutch text at Martens, *Recueil de Traités*, vol. 3, p. 223.

That their States-General depend upon, and have perfect faith in the power, generosity, and loyalty of Her Imperial Russian Majesty and of Their Royal Majesties and other high allies, for the fulfilment of their engagements and vindication of their own honor, for the execution of the enterprise so worthily undertaken by them to strengthen and safeguard the neutral nations of Europe against the attacks of the belligerent Powers, and persevering in that trust have not hesitated in overcoming their scruples as to the possible results consequent upon the accession to the alliance concluded between the high Powers; and aware of the results which the forwarding of the declaration to the belligerent Powers demanded in the premises might have for the Republic, the States-General have not hesitated to resolve in effect to join the alliance and to forward the declaration, the sending of the copies of the declarations of the States-General to the belligerent Powers having been notified by their Ministers to Her Imperial Russian Majesty and to Their Royal Majesties.

The results have fully justified the exact expectations of the States-General, for His Majesty of Great Britain was greatly displeased with the act of the States-General, and from the moment that His Majesty of Great Britain was informed that the resolution to join the armed neutrality was on the point of being adopted by the States-General, His Majesty of Great Britain did not hesitate to address the Republic in a most unusual way, and, without giving it the necessary time for deliberation required by the form of government and constitution of our provinces—of which fact His Majesty of Great Britain must have had knowledge,—His Majesty demanded immediate satisfaction and punishment for a pretended offense anent a certain disclosed act with North America, and without in any way asking for a provisional answer and expression of disavowal, without criticism of the act, and without asking for an opinion from the Department of Justice of the Provinces of Holland and of West Friesland which were concerned in the matter regarding the law of the country and the reasons which might or might not be adduced, so that in the case, the accused persons could be lawfully prosecuted, without which, neither in the realm of Great Britain, nor in the Republic, nor in any well regulated government, any one can be prosecuted, His Majesty, who could thus have received satisfaction or could at least have stayed the threatened measures, decided to obtain independent satisfaction, attacked the Republic unawares, and hastened the offensive measures

which it pleased His Majesty to take against the Republic. And when Count von Wolderen on the part of the States-General came to hand Lord Starmont the said declaration respecting the right of neutrality the latter almost refused to accept it, saying that he could no longer receive him as the Envoy of the Republic because the manifesto which he had sent him, now that the Republic was being regarded as an enemy, had meanwhile been sent to Count von Wolderen one hour earlier than the hour appointed the day before by Lord Starmont upon the repeated request for an interview made by Count von Wolderen on the same day.

The States-General trust that, although the manifesto of His Majesty of Great Britain, by which His Majesty makes known his intention of regarding the Republic as an enemy, does not refer to the alliance for an armed neutrality, yet the entire action of the Ministry of His Great Britannic Majesty, and the time when and the manner in which the said manifesto was issued, show sufficiently that the hatred toward or for the alliance to which the States-General recently acceded is the prime reason for the explosion of the displeasure of His Great Britannic Majesty toward the Republic, and the consequences thereof are the capture of a very large number of ships belonging to its citizens and of national war-ships, even as in a publicly declared war.

When carefully examined, the manifesto, of which Her Imperial Russian Majesty and Their Royal Majesties have been informed by His Great Britannic Majesty and of which copies will be sent to the Ministers Plenipotentiary and Envoys for their information, bears evidence of hatred on account of the alliance of the Republic with Her Imperial Russian Majesty and Their Royal Majesties, though an effort has been made to conceal the fact with diplomatic rhetoric, and shows in so far as the Republic is impugned for offenses which shall justify the State in resorting to hostile attack, that the same has accepted the neutrality without considering that Her Imperial Russian Majesty and Their Royal Majesties are thereby assailed at the same time, that is, the Powers mediating between Great Britain and the Republic, to whom the treaties have been communicated and are known by them, can not be judged for having contracted a neutrality alliance with a Power which they judge not to be lawfully neutral; furthermore, it was known before that the Court of Great Britain means to derive its pretended right to renounce its treaty of 1674 with

the Republic, and thus to seize its ships destined for one of the belligerent Powers, together with their belongings, from the pretended contradiction of the neutrality of the Republic with its engagements.

The same reason for His Great Britannic Majesty's action toward the Republic: hatred for its accession to the above-mentioned alliance, can also be seen clearly in the manifesto itself, in so far as the latter impugns the Republic for facilitating the departure of ammunition ships to France through the revocation of domestic laws. While there is no need to demonstrate the self-evident truth that up to the present no laws have been thus revoked by the Republic to facilitate such transportation, the accusation again shows that the stumbling block is found in the right of neutrality which permits the transportation by ship of ammunition to the belligerent Powers; and upon this right rests the alliance between her Imperial Russian Majesty, Their Royal Majesties and the States-General of the Netherlands, the which has been evidenced and affirmed as lawful and notified by declarations to the belligerent Powers, and from which arose the hatred toward the alliance.

At present the States-General has no intention further to discuss the said manifesto or to make answer to the same, confident that Her Imperial Russian Majesty and Their Royal Majesties are well able to appreciate it, and that their Ministers and Envoys are sufficiently familiar with both the treaties and the acts of the States-General so as to enable them to disprove by strong verbal argumentation the reasons specified in the manifesto and to establish convincingly that from the outset of the difficulties—even by restricting the commerce of its inhabitants in its own colony, and by holding one of its governors in the West Indies responsible because of complaint lodged against him,—the States-General has shown its unwillingness to do anything to the advantage of the colonies in America and that it has constantly upheld that principle; it is therefore evident and clear that His Great Britannic Majesty's displeasure toward the Republic and the consequences thereof are to be found in the effects of the hatred for the above-mentioned alliance, and on that account finds justification for insisting upon the true meaning of Articles 7, 8 and 9 of the alliance with Her Imperial Russian Majesty and Their Royal Majesties; that the States-General—though it had reason to feel aggrieved because of a single act which upon the intervention of the allies was repaired,—before resorting to armed force had asked the allies to afford it help

for reparation thereof, but that the States-General having been attacked in hostile manner by His Great Britannic Majesty, because of and out of hatred for the convention with Her Imperial Russian Majesty and Their Royal Majesties, and not being in direct relations with His Majesty, has been compelled to defend itself and to resist the attack in the same manner as it had been attacked and to meet hostilities with hostilities,—believes, if ever it had reason so to believe, that it may expect that the allied Powers will be pleased to make an actual and common cause with it and to secure for it full satisfaction, and that the allied Powers will be pleased to assume such further obligations as may be required by the circumstances; the States-General requests this most earnestly and expects this help with all the more confidence, because it feels quite certain that Her Imperial Russian Majesty and Their Royal Majesties will not permit that the States-General and the Republic shall become the unfortunate victims of their trust in the generosity and the zeal of Her Imperial Russian Majesty and Their Royal Majesties for the maintenance of the right of neutrality, against the power of Great Britain, especially in the present circumstances when that realm is everywhere in arms, and the States-General with the ample navigation of private individuals, and the employment of a large number of sailors is not equal to the task of operating the sea power of the Republic, small or large as it may be.

The Ministers Plenipotentiary and Envoys at the Courts to which they are accredited shall insistently and urgently request a prompt and sufficient assistance from the allies, so that the States-General may not, without their help, before and at the time of the first onslaught, have to bear the weight and force of the attack of His Great Britannic Majesty, and that in consequence it may not be exposed to the danger of becoming useless to the alliance.

They shall hold themselves ready to enter into such further engagements as the high allies might deem necessary for the furtherance of the common cause and mutual defense.

They shall endeavor to find out if there is a disposition on the part of some of the allies to place at the service, for the account of the States-General, but for the common defense, some of their armed ships, or if there is willingness to transfer such ships, on the basis of a suitable subsidy, to the States-General which will ever be found prepared to perfect such an arrangement, and, finding that there is such

disposition, they shall do their utmost to strengthen it, and, the sooner the better, to report to the States-General anything definite and agreeable to the great need of the Republic.

**Netherland Ordinance concerning Commerce and Navigation,
January 26, 1781¹**

The States-General of the United Provinces of the Netherlands to all those who shall see these presents or hear them read, greeting: We announce that, the King of Great Britain having seen fit to make a hostile attack on this State without any valid reason, we find ourselves compelled to do all that can help our defense and to exercise the right which the conduct of the said King gives us to act against him in the same way as he is acting against us. And to prevent any injury from that direction, we are obliged and constrained, in so far as it lies in our power, and in so far as it can be done in conformity with the law of nations and without injury to our allies, friends, and neutrals, to deprive the said King of the opportunity and the necessary means which he might use to injure, more and more, this State and the good people of these Provinces.

That is why we have found it advisable and deemed it necessary to issue orders, as well as very severe prohibitions, to all those under our authority, and to inform and advise in a friendly manner all other nations which are in alliance with or neutral with respect to this State, and by these presents we order, prohibit, and advise respectively.

ARTICLE 1

That henceforth no one shall attempt to export from these Provinces on any vessels other than their own (or those that they may hire from the East or West Indian Companies, or other vessels that are permitted belonging to individuals in the service of the colonies of this State, after having obtained permission from the Admiralty, under bond of three times the value, to be verified to the satisfaction of the Admiralty Board within a certain period, proportional to the distances

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 276.

of the places, and to be declared on arrival at the place of destination) any arms, munitions or any other war material, fireworks, saltpeter, sulphur, refined or unrefined cannon powder, fuses, cannons, stone mortars, gun carriages, naval carriages, balls, bombs, frames, grenades, muskets, musketoons, guns, pistols, petards, powder bags, helmets, breastplates, shoulder-belts, pouches, pikes, halberds, swords, bayonets, and all other fire-arms or steel arms, among which are included gun barrels, locks, and everything that is used in assembling them, horses, saddles, pistol holsters, and everything that is used in harness for horses; masts, rods, and other turned wood, oak beams and other timber for the construction of ships, sawed or unsawed, the kinds of which are specified and declared to be construction timber by our proclamation of August 1, 1747, as well as canvas, hemp, cordage, string, cables, and furthermore anchors, iron, steel, small iron and steel, all kinds of copper, metal, pitch, and tar, and also flour, wheat, oats, horse beans and pigeon beans, under penalty of confiscation, if an attempt is made to export any of the above-mentioned articles, and in addition a fine of double their value, one-third of which to go to the informer, one-third to the officer making the accusation, and the remaining third to the State.

ARTICLE 2

That, moreover, no inhabitant of these Provinces shall attempt to export any of the above-mentioned articles, or to send any ships from these Provinces, or from other countries, kingdoms, places or cities, directly or indirectly, to any ports, islands, cities, or places of Great Britain, or that are under the rule of the said King of Great Britain, whether in Europe or outside of Europe. That no one also, even though a foreigner and not an inhabitant of these Provinces shall undertake to export any of the aforesaid articles from these Provinces to any of those places; all under penalty of confiscation of the said articles, and, in addition, punishment without mitigation as an enemy of the State.

ARTICLE 3

And considering that because of the duty that requires every legitimate sovereign to defend and preserve his good subjects and inhabitants by all possible means against all acts of violence and molestation, we can not, and, according to the common law and the

practices of all peoples, are not obliged to allow any articles of contraband to be furnished to the said King or to his subjects by any one whatsoever; we desire by these presents to notify and seriously to request and exhort all our allies and friends, neutrals, and, in general, all peoples and nations, not to attempt until further notice to transport from any countries, kingdoms, ports, place or cities of Great Britain or under the rule of the said King, either in Europe or outside of Europe, any articles of contraband, recognized as such in treaties, or, where there are no such treaties between them and us, any munitions of war or arms, artillery and its fireworks, or anything thereto appertaining, pistols, bombs, grenades, cannon powder, fuses, balls, pikes, swords, lances, halberds, helmets, breastplates, or other similar arms, as well as soldiers, horses, equipment for horses, or any other war material; since it is our intention to consider as a legitimate prize and to confiscate the aforesaid contraband goods found on board vessels in contravention of our present notice and ordinance, for transportation to the places mentioned.

ARTICLE 4

We order, furthermore, all our inhabitants and subjects, notifying and exhorting all our allies and friends, neutrals, and, in general, all peoples and nations that desire to navigate toward any kingdoms, countries, cities, or places of this State, situated in the Orient, in the Occident, or toward the north, or that wish to sail from those regions in this direction, to choose and keep to the open sea, since it is our intention, and we so declare by these presents, that every vessel sailing along the coasts of England, or other countries, islands, or places that are under the rule of the King of England, and all vessels that happen to be in shoals or shallows, thereby not being beyond suspicion of meditating some act in violation of our ordinance and notice, when loaded wholly or partially with any of the above-mentioned articles of contraband, shall be seized and brought in by captains or other naval officers, as well as by the privateers of these Provinces, to be adjudicated by the counselors of the Admiralty, as set forth in Articles 2 and 3 hereof, unless the said vessels should be driven into port by stormy weather or some other great necessity and from the circumstances it should be thus interpreted and decided in this way by the aforesaid Admiralty Board.

ARTICLE 5

That in order to forestall and prevent any fraud that might be attempted against the present ordinance and notice, we order and command all owners or vessels and merchants who are inhabitants of these Provinces, or those who send their vessels and goods out of this country; we notify and exhort, moreover, all other persons, of whatever nation they may be or whencesoever they may come, not to load or cause to be loaded in their vessels goods, wares, or merchandise, nor to transport them or cause them to be transported in any other way than under regular ship's papers, proper passports, letters of destination, bills of lading, of advice, and of shipment, or other similar documents, as is required for loading and transportation by virtue of the laws and proclamations of the places where the goods, wares, and merchandise are loaded, for we shall consider as subject to confiscation, and now declare to be legitimate prize, all vessels that shall sail with ship's registers of more than one sovereign or regent; as well as the goods, wares, and merchandise with which they are loaded, for which there is found to be more than one letter of destination, two sets of freight invoices, bills of lading, or other documents, as well as vessels and goods which are not properly supplied with the aforesaid requisite documents.

ARTICLE 6

And in order that every officer and commander of a war-ship, belonging either to the State or to private owners, who have commissions from His Highness the Prince of Orange and of Nassau, in his capacity as Admiral General of these Provinces, may be assured that the vessels which he may encounter at sea, laden with any of the aforesaid contraband goods, are not bound for the aforesaid ports, cities, and places of Great Britain or other countries under the rule of the aforesaid King, the aforesaid captains shall be permitted to accost at sea all vessels against which there may be any suspicion, and require them to show their ship's registers, passports, letters of destination, and bills of lading, to prove to whom the vessels belong, where and in what place they were loaded, of what their cargoes consist, and at what point they are to be unloaded. When all these have been shown to them and when they have ascertained that the aforesaid vessels are not bound, with any of the said contraband goods, to any ports or places under the rule of the King of Great Britain, they shall

permit them to pass freely; but if the contrary should, from the documents or otherwise, appear to be the case, they shall safely bring in such vessels with the goods on board, and shall take possession of all the documents that are found on board of such vessels and that have been shown to them; as well as to draw up in writing, in all due form, the declarations which the masters and members of the crew shall make with regard to the purpose of their voyage; likewise as to the character of the vessel and of its cargo, and they shall have the master sign these declarations, to be forwarded and delivered together with the documents found, the vessel itself, and its cargo to the member of the Admiralty Board, under whose authority the capturing vessel is. As to vessels under convoy, the declarations of the officers of the convoy that the vessels under their convoy are not loaded with contraband goods, according to their full knowledge thereof, must be accepted, and no further visit shall be required.

ARTICLE 7

It is also our intention that all the penalties herein provided shall apply to and shall be enforced against any of our inhabitants, who violate our ordinance, whether merchants, masters, or any one else, together with confiscation of the vessels and of the goods thereon belonging to the owner, as provided hereinbefore; or if they are not within reach, they shall be condemned to pay a fine equivalent to the amount, each one in his individual capacity, upon their arrival in these Provinces. Or if it should be learned and if it should be proved that they had contravened in any way our present ordinance and proclamation, they shall be considered as having been caught in the act and brought into port by our war-ships, or else seized and brought to justice in this country by other officers of the State.

ARTICLE 8

And in order that the execution of our present ordinance and notice may give no legitimate cause of complaint to any king, republic, prince, power, or city, who are in alliance and union with this State, we order and expressly charge by these presents all our nautical commanders and other officers, who are commissioned, whether of the war-ships of the State or of vessels armed by private individuals on commissions of His Royal Highness, to be guided strictly by the alliances and

treaties which we have made or may hereafter make with other kings, republics, princes, powers, and cities, concerning the transportation of contraband goods. To the same end, we order our Admiralty Board to notify in particular all nautical commanders, both those of the State and those of privateers armed under commissions of His Highness, to interpret properly the aforesaid Article 3, and to furnish them with extracts from the said treaties, with orders to govern themselves strictly thereby.

ARTICLE 9

Jurisdiction of offenses against this ordinance shall belong to the Board of Admiralty in the districts in which the violations shall be discovered, or from which the commanders who shall make the seizures sailed.

ARTICLE 10

In cases where the offenders are not caught in the act, but are accused thereafter, jurisdiction shall belong to the Board of Admiralty, or to the regular judges before whom they are brought in first instance. And in order that all officers and all persons in general who have at heart the welfare of the State, and who are opposed to such contraventions, may be the more attentive to the scrupulous observance of this ordinance by each and every one, and to the punishment of offenders, as an example, in accordance with the terms of these presents, the money realized through confiscation and otherwise shall be applied as it ordinarily is by the proclamations of the respective Provinces of the United Provinces, to wit: one-third to the informer, whether he is a sworn employee of the State or not, one-third to the officer making the accusation, and the remaining third to the State.

ARTICLE 11

As to vessels and goods that shall be seized and brought in by any war-ships of this State or by vessels sailing under commissions, because of violation of the present ordinance, and which shall be declared subject to confiscation and lawful prize, the division shall be made according to instructions, proclamation, and ordinance which have heretofore been published or which may hereafter be published.

ARTICLE 12

And in order that all vessels and goods, which shall be seized and brought to these Provinces because of violations, may be delivered into the hands of the said Board, we order expressly those who shall seize them strictly to observe, and to see to it that all those whose duty it is shall strictly observe, the terms of our proclamation of December 1, 1640, against general pillaging and forcible capture, with the warning that the penalties provided by the said proclamation shall be severely enforced against those who may have attempted any act contrary to the aforesaid prohibition.

ARTICLE 13

To prevent the losses resulting from the confiscation of the aforesaid vessels and goods from falling on any one other than the offenders, and from affecting through insurance any other inhabitants of these Provinces, as well as to restrict as much as possible English navigation and commerce, we expressly order, not only that none of our inhabitants shall attempt to insure or to have insured directly or indirectly, in this country or elsewhere, any contraband goods, in any way whatsoever; nor to give or to receive any refunds for the purpose of circumventing our proclamation, either directly or indirectly, on any pretext whatever, under penalty of confiscation of the sums insured by the insurers. That the said prohibition shall apply both to insurance and to refunds, and officers who shall be convicted of having neglected this part of their duty shall be severely punished by being deprived of their positions or such other penalty as the case may require.

And in order that no one may allege ignorance hereof, these presents shall be proclaimed, posted, and published in the usual way.

Done and adopted in our Assembly at The Hague, on January 26, 1781.

(Signed) W. v. LYNDEN

By order of Their High Mightinesses,

(Signed) FLAGEL

Memorandum of the Court of Sweden for the Court of Russia concerning the Effect of the Accession of the Netherlands to the System of Armed Neutrality, February 28, 1781¹

When the Republic of the United Provinces of the Netherlands resolved to take part in the armed neutrality by its accession to the maritime conventions of the northern Powers, it was enjoying complete neutrality, and there was no obstacle to the accomplishment of an undertaking which was carried to its perfection by an act of accession and acceptance, signed at St. Petersburg on December 24, last, old style.

By this act the Republic bound itself to the common cause of neutral Powers, and acquired as such rights to the assistance of the other Powers, with which it was to share the obligations and advantages, in conformity with the terms of the conventions concluded during the past year between Sweden, Russia, and Denmark.

But the Republic was unable to maintain very long the status in which it had contracted its engagements. England declared war on it and forced the Republic to leave the class of neutral Powers and to take its place among the belligerent Powers. All this took place with such marvellous rapidity that the Ambassadors of both nations were recalled, letters of marque despatched, and several Dutch vessels taken before the news of the accession concluded at St. Petersburg reached The Hague.

In such extraordinary state of affairs, it is essential that the three Crowns of the north carefully consider the nature of their engagements with respect to the Republic, and decide the question in close union and concert.

The system adopted by these Powers is a system of perfect neutrality. It is only by following this system that they have the right to carry on their commerce freely, that they have bound themselves to protect it and mutually to uphold it. From this point of view they have fixed the obligations and the assistance which they mutually owe each other; their naval armaments are fitted out accordingly and are not intended to take the offensive against any one. The warships of a neutral nation, the obligations and advantages are the same on all sides; but it is not the same with regard to a nation at war. Measures can not be concerted, nor can they act in common with such a nation without overstepping the bounds prescribed by a strict neu-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 235.

trality, without upsetting the system upon which their union and their engagements are founded.

In spite of so marked a difference between the position of the three Crowns of the north and that of the Republic of Holland, the latter has addressed the former by memoranda transmitted to the Courts of Stockholm, St. Petersburg, and Copenhagen, in which memoranda the States-General of the United Provinces demand prompt and effective assistance from the three Courts by virtue of the accession of the Republic to the conventions of St. Petersburg and of Copenhagen, and by virtue of the engagements therein contained.

The principal ground on which the Republic bases its demand consists in a combination of the steps marking the conduct of the Court of London. It believes that these steps clearly show a determination not to allow the Republic to accede to the conventions of the northern Powers. It is out of hatred for this accession that the Republic has been dragged into the war, and therefore, in accordance with Articles 7, 8, and 9 of the said conventions, the Powers which accepted this accession must come to the aid of the Republic.

In view of the extraordinary and violent action of Great Britain toward the Republic, in view of the extreme care with which Lord Stormont prevented the declaration of the States-General from reaching him before the rupture was announced to Count de Wëlderen, in view of all that preceded and followed this event, it is impossible to deny the motive which actuated the Court of London. But that reason was not given in that Court's manifesto; it mentions only acts previous to the resolution itself of the States-General with regard to its accession; and Article 6 of the conventions of Petersburg and of Copenhagen provides that the obligations of the contracting parties do not include matters which arose before the signing of the said conventions; that is to say, that they can have no retroactive effect.

The three Crowns of the north are therefore free to choose between adopting the reasoning and the consequences set forth by the States-General, or to accept the reasons announced in the declaration of war, which the Court of London has had published. In the first case, it will be necessary to take part in the war in favor of the Republic; in the second, they can, if it is deemed advisable, that the demand has been made, considering the Republic's quarrel as foreign to the cause of neutrals and as having arisen before the former's accession; but both of these lines of action appear to have great drawbacks. In the first case, it would be necessary to renounce the advantages of neutrality,

the glorious aims they had in mind when they formed the maritime association; it would be necessary to fling themselves into all the horrors and to suffer all the losses which are the natural consequences of war. In the second case, they would be exhibiting to the whole world a spectacle of utter weakness, and their absolute desertion of a State with which they fear to bind themselves by formal engagements.

There remains between these two extreme courses a middle course, or to speak more accurately, there is an expedient, and it seems advisable to begin with this. It remains further to see just where this expedient may lead and what its effect will be. This expedient would seem to consist in a declaration which the three Crowns of the north would consider themselves as authorized to have delivered to the Court of London, the terms of which should be decided upon among themselves, and by which His Britannic Majesty would be informed that the Republic has just acceded to their maritime conventions; that they regard the Republic, by reason of its accession, as an ally, having the same cause to uphold and the same rights to defend; that the three Crowns of the north have no desire to sit in judgment on the reasons which induced His Britannic Majesty to declare war on the Republic, but that they acknowledge themselves to be sincerely interested in the happiness and welfare of that State; that because of these sentiments the allied Courts hope that His Britannic Majesty will see fit to open a way for reconciliation and settlement between himself and the Republic; that the three Crowns would be glad to use their good offices to terminate the differences amicably; that they would consider themselves as performing a service essential to humanity, if they could make this reconciliation general, and that in the meantime they hope that both England and the Republic may see fit to make a beginning by ceasing hostilities and by restoring matters to the status that existed before the rupture. According to the agreement reached, this step can be taken either verbally or in writing, but separately, by the Ministers of the three Crowns residing in London. They should also decide among themselves as to the time when these common representations should be made, in order to give their efforts more weight and greater force; and if their language is supported by the naval armaments, which the Crowns of the north are now making ready, it is believed that England will reflect somewhat seriously thereon. At any rate, the dignity of our Courts would seem to require that they do something in favor of the Republic which is considered as their ally, and it is no

less necessary that our action should show to Europe the reasons, the moderation, as well as the firmness which have characterized the conduct of our Courts up to the present time.

It can not be foreseen whether the English Ministry will be willing to enter into negotiations, or whether it will merely pretend to be willing; but in any event, the respective Ministers should at the same time be instructed not to depart from the armistice proposal, nor from the proposal that the Republic shall in the meantime enjoy freedom of commerce; in default of which they can reply that they are not authorized to listen to proposals by England; but they will receive the proposals of that Court *ad referendum*, if such a condition is granted them. The three Crowns of the north will consult with the Republic concerning the matters to be submitted, or they will reduce the whole to what they consider just and reasonable; and they shall strive by common action to persuade both of the interested Powers to accept these conditions.

If in the course of such a negotiation there should be an opportunity to bring together the other belligerent Powers, this opportunity shall be eagerly seized and an effort shall be made to bring about a general pacification, establishing on the conclusion of peace the general maritime code for neutrals, adopted by our Courts, the general establishment of which will meet the wishes of the whole world and will elevate the Crowns cooperating therein to the highest point of glory.

STOCKHOLM, *February 17, 1781.*

**Memorial of the States-General of the Netherlands to the Court of
Sweden, February 28, 1781¹**

The underwritten Envoy Extraordinary from their High Mightinesses the States-General of the United Provinces, to His Majesty the King of Sweden, in pursuance of an express order from his masters, has the honor to propose to his Swedish Majesty.

That their High Mightinesses have acceded, by their resolution of the 20th of November, 1780, to the treaty of armed neutrality, in con-

¹*Annual Register*, 1781, p. 311.

formity to the invitation of the northern Powers; and placing the most perfect confidence in the power, magnanimity, and fidelity of Their Imperial and Royal Majesties, for the fulfilling of their engagements, and the maintaining of their dignity, by accomplishing a work so gloriously undertaken, namely, the liberty of the seas, and freedom of navigation for all neutral nations, were not deterred by the consideration of the consequences, which that accession and declaration might be productive of to the Republic, from the part of the belligerent Powers. But their High Mightinesses have declared in favor of this accession and declaration, in replying implicitly on the sentiments of Their Imperial and Royal Majesties, whom they also acquainted in due time, of the measures taken in consequence thereof.

That the event has also justified their requisition, in regard to the British Court: since the minister of the latter, after his fruitless endeavors to thwart the accession to the alliance, took the resolution, on the first notice he had of it, to speak in a strain truly unprecedented, and ill suited to the mutual regard which the respective sovereigns owe to each other: without so much as granting to the Republic a sufficient time to consider on the matter, according to the political system of the Republic, which His Britannic Majesty is fully acquainted with: the English Minister insisted, nevertheless, upon an immediate and speedy satisfaction, and the punishment of a pretended offense, occasioned by the discovery of a negotiation with North America, without receiving as an ample satisfaction, the provisional answer, nor the formal disavowal of their High Mightinesses of a negotiation, of which (as acknowledged even by His Britannic Majesty) they had not the least share, or knowledge: of a negotiation relating to a pretended treaty, which, in itself, sufficiently denotes, from its terms, only the sketch of an eventual treaty entered into by private persons, without being formally authorized thereto by the body of the magistrates of Amsterdam, or by the states of the province of Holland, and much less by the States-General, whose members are alone authorized to enter into engagements in the name of the Republic.

The British Minister went even so far as to refuse noticing the resolution, by which the province of Holland (the only one concerned) was required to deliberate, how far the laws of the country might give authority to prosecute the persons accused, and punish them; a formality, without which no punishment can be inflicted, neither in England nor in this Republic, or any other country. Nay, the said

Minister went so far as to threaten, that in case of a refusal, his sovereign would adopt such means, as to procure himself that satisfaction. It was at the same time resolved to attack the Republic by surprise, and so far hasten the measures taken to begin hostilities, that Lord Stormont, making use of vain pretenses, would not so much as accept from Count Welderen the aforesaid declaration; and answered, under his hand, "That he (Stormont) could no longer look upon him as the Minister of a friendly Power, after having officially acquainted him of his King's manifesto:" whilst this very manifesto (and this should be noted) was delivered into the hands of Count Welderen, only an hour before the time appointed by Lord Stormont, the preceding day, for giving him audience. That, moreover, although no mention is made in the manifesto alluded to, of the Republic acceding to the treaty of the armed neutrality (which it was of the utmost importance to pass over in silence), it nevertheless appears clearly, to the penetrating eye of Your Majesty, as well as to all Europe, if the whole proceedings are attended to, and the time and manner in which the manifesto was published, that the hatred, occasioned by the Republic acceding to the confederation of armed neutrality, is the true motive of his British Majesty's resentment, and the only one that could excite him to an open attack against the Republic, by seizing, at once, upon a great number of Dutch merchantmen, and some ships of war. Besides that the aforesaid manifesto, known to your majesty, sufficiently displays the cause of England's displeasure: the more so as amongst the pretenses made use of to varnish over the hostilities against the Republic, it is said, that it had taken a neutral part: without the cabinet of St James's deigning to observe, that such answer was insulting to the neutral Powers who are perfectly acquainted with the treaties now in force between England and the Republic; and that the latter could not be charged with an intention of entering into an alliance with a Power not lawfully neuter in the present contest, and without observing that this liberty of negotiating had been put beyond all doubt, by England itself; since, by suspending, in April, 1780, the effects of the treaty passed in 1674, the English having manifested their intent of looking henceforth upon the Republic as a neutral Power, no ways privileged by any treaty.

That for the reasons here above mentioned, the animosity of Great Britain appears still more conspicuous, from the ill-grounded reproach contained in the said manifesto against this Republic, that their High

Mightinesses had encouraged the exportation of naval stores for France, by suspending the usual duties on those commodities, whilst it is known to all the world, that such a suspension has never taken place, and that the Republic had a right to export those commodities, not only agreeably to the treaty in 1674, but also in conformity to the principles laid down by the neutral Powers in the convention of armed neutrality. That consequently it would be needless to enter any farther into the merits of the said manifesto; as His Swedish Majesty has it in his power to appreciate himself its value, and must, moreover, be fully persuaded that the line of conduct pursued by their High Mightinesses since the beginning of the troubles with America, is an evident proof, that they have never favored or countenanced the revolted colonies; witness the many partial condescensions in favor of England, which were merely gratuitous on the part of their High Mightinesses, by circumscribing the trade within their own colonies; by refusing to grant the protection of their convoys to vessels laden with ship timber; and by recalling the Governor of St. Eustatia on some ill-grounded complaints of the British ministry: condescensions which have been rewarded by the attack and seizure of the convoy of Count Byland; by a violation of the territories of this Republic, and by the taking by force some American vessels from under the very batteries of the island of St. Martin.

That Their High Mightinesses having thus faithfully adhered to the system of moderation, it is evident that the resentment of His Britannic Majesty arises merely from their accession to the treaty of armed neutrality; and that, consequently, Their High Mightinesses are fully authorized to claim the performance of the conditions stipulated in the Articles 7, 8, and 9 of the treaty of armed neutrality, which form the basis of that union and alliance contracted between Their Imperial and Royal Majesties and the Republic. That therefore no obstacles can hinder or delay the fulfilling of the engagements contracted by virtue of the said confederation, of which the Republic ought to be considered as a member from the very moment in which their High Mightinesses acceded to the same resolution at The Hague; and dispatched their declaration, in conformity to the said accession and convention, to the belligerent Powers.

That if Their High Mightinesses had to complain only of a single act of offense, or an attack committed against them, which was likely to be redressed by the friendly interposition of their allies, they would

have claimed their intervention rather than have recourse to arms; but as their High Mightinesses find themselves actually and suddenly attacked in an hostile manner by His Britannic Majesty, in consequence of, and from mere resentment of the above mentioned alliance, they find themselves under the necessity of repelling force by force, and to return hostilities for hostilities; being fully persuaded that the allied Powers will not hesitate to make this their common cause, and to procure to their Republic due satisfaction and indemnity for the losses occasioned by an attack equally unjust and violent; and that the said Powers will moreover, in conjunction with the States-General, take such farther measures, as the exigences of the present circumstances may require. This Their High Mightinesses solicit with great earnestness, and rely upon it with so much more confidence, as they are firmly persuaded, that the generous and equitable sentiments, which actuate Their Imperial and Royal Majesties, will not suffer them to let the Republic fall a victim to a system of politics, not less glorious than founded in equity, and established for the security of the rights of neutral nations; and especially as the Republic, if left singly exposed to the iniquitous and violent attacks of England, would hardly be able to cope with that overbearing Power, and thus run the hazard of becoming totally useless to the said confederation.

For these reasons, the underwritten envoy extraordinary, insisting on the motives urged here above, and fully persuaded that the ratifications of the treaty signed at Petersburg will take place as soon as possible, has the honor, in the name and by express order of his masters, to claim the performance of the engagements stipulated in the Articles 7, 8, and 9 of the said treaty, and to require, in virtue thereof, a speedy and adequate assistance from His Swedish Majesty, whose noble and equitable sentiments, acknowledged by all Europe, will not permit him to abandon the complete establishment of a system worthy the highest praise.

The friendship and affection of Your Majesty towards their High Mightinesses, leave them no doubt of Your Majesty's willingly granting the assistance which they now claim, and also promise to the underwritten envoy a speedy and satisfactory answer, which he solicits the more anxiously, as every moment's delay may be attended with heavy and irreparable losses to the Republic.

(Signed) D. W. VAN LYNDEN

STOCKHOLM, *February 28, 1781.*

**Rescript of Her Majesty the Empress of Russia to Count de
Moussin Pouschkin, Her Minister to Sweden, 1781¹**

Your reports and the communications of Baron Nolken, the Swedish Minister, informed us at approximately the same time both of the disposition of the Court of Sweden with regard to the war which has broken out between the two maritime Powers and of the desire of His Swedish Majesty to learn our own sentiments on this subject. Accustomed as we are to reply in kind to the confidence of our allies, we are still less inclined to deviate from this rule in the present circumstances, in which consideration for our respective engagements with regard to armed neutrality must elicit in the same degree our attention and our interest. Therefore, you are authorized to speak confidentially with Count Scheffer, so that he may inform his master, telling him that as soon as we learned of the sudden departure of the Duke of York from The Hague, we hastened to make the strongest kind of representations to the Court of London, to prevent it from entering upon active hostilities. We were then ignorant of the fact that hostilities were to follow immediately upon the departure of its Ambassador. Being convinced of this fact a few days later and realizing the futility of any step to prevent hostilities, we turned our attention to new measures better adapted to the times and circumstances, which would be capable of extinguishing the sparks of war at the outset. We were led to this course by a twofold reason: the thought of humanity suffering from the shedding of innocent blood, and the interests of neutral nations with regard to their commerce with belligerents. Although, after the formal request of the King of England for our mediation, conjointly with the Emperor of the Romans, to bring about peace between him and the Courts of France and Spain, there seemed to be some hope for opening peace negotiations, nevertheless, as time was required to discuss the matter with the two Crowns and to receive their mutual consent, we have deemed it advisable to find a shorter way to reconcile England and Holland and have offered our separate mediation for that purpose. It was our intention by this action to prevent in this reconciliation the discussion of any subject that is foreign to them, especially the question of the independence of the Americans, which would have caused the chief difficulty. The States-General received our offer with

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 240

gratitude, and were eager to take advantage of it, as you will see from the enclosure herewith. England, on the contrary, declined, postponing its reconciliation with the Republic until the general peace negotiation, under the joint mediation of the two Imperial Courts. When that takes place, we shall not fail to exert our own efforts in favor of the Republic of Holland as well as to interest His Majesty the Emperor in its behalf, in order that it may be included in the general pacification. After having given assurances to the States-General, we promised them at the same time to confer amicably with our allies with a view to a further common and unanimous effort with the Court of London, to bring it to a moderate course and to the love of peace.

We hesitated the less to give these assurances to their High Mightinesses, because we noted in the memorandum of February 17, communicated by Baron Nolken, a copy of which is enclosed herewith for your information, a decided determination on the part of His Swedish Majesty to follow a similar course. The entire contents of this memorandum show, on the one hand, the profound penetration of that Prince, and, on the other hand, a point of view in perfect accord with ours. In truth, the time and the circumstances in which Great Britain has attacked her old ally, the Republic of Holland, indicate sufficiently that the real cause of her aggression lies in the accession of the States-General to our maritime conventions, the more so because Holland thereby protected the navigation and commercial industries of her subjects, the greater part of which was carried on with the enemies of England.

But, on the other hand, it is no less true that the actual rupture preceded the formal accession of their High Mightinesses to the conventions of Copenhagen and Petersburg, and that the reasons set forth antedate and are foreign to the cause of the allies of the armed neutrality. In the first part of this argument, Articles 7, 8, and 9 are entirely favorable to the Dutch; but Article 6 frees us, in terms no less clear, from the duty of participating in their war with England. So essential a difference in the stipulations of these conventions leaves the three allied Courts free to follow the course that is most advantageous and the most in harmony with their interests.

There could be no more judicious or wiser appraisal of the delicacy of the decision to be made than that adopted in the Swedish memorandum. The drawbacks on each side were discussed and

shown in their true light, with an indication of the best way to avoid them. In admitting this method—that is to say, the observance of neutrality as the rule of conduct for the three allied Crowns in the new war between maritime Powers,—we did not fail to inform at once the Courts of Stockholm and Copenhagen of the orders which we had transmitted to our commanding officers at sea to regard the Republic of the United Provinces as a neutral Power with respect to the two branches of the House of Bourbon, and belligerent with respect to England. In calculating the time, we shall expect to hear soon from you and from the Councilor of Staté, Mr. Sacken, that the Kings our allies have likewise given similar orders in their States, so that all our actions and all the steps that we take shall be everywhere entirely uniform in all respects, and bear witness to the close union among us, which in the centuries to come must justify this beneficent system of neutral merchant navigation.

After having taken the measures that we owe to the welfare of our own States before all foreign interests, we shall not fail, as we have said heretofore, to employ in favor of the Republic of Holland all means compatible with this paramount duty. Consequently we willingly give our support to the idea of His Swedish Majesty that suitable representations be made at the Court of London in the name of the three allied Courts. In the Swedish memorandum there is question of a declaration, but a declaration might by its very nature carry us beyond our intentions, while a mere verbal hint, expressing the same views with the same force, can bind us in no way against our will and desire. This observation, as simple as it is essential, will not escape Count Scheffer's sagacity, with whom you are to confer as to the wording of these representations, as to the time when they shall be made at London, and as to the manner in which our respective Ministers at that Court shall make them.

We should not have placed any obstacle in the way of the adoption of the very wording proposed in the above-mentioned memorandum, since we found it as moderate as it was in keeping with the purpose in view, if circumstances, which have now become well known to the Court of Stockholm, did not seem to require certain changes. To this end, you will find hereto annexed a new draft of the representations, which you will bring to the knowledge of Count de Cheffer, telling him that in our opinion, in order that they may be more readily understood by the English Ministry, they might be delivered in writ-

ing, on condition, however, that they be regarded as merely a verbal hint. We shall not object if the Court of Sweden or the Court of Denmark, for reasons of their own, should make use of a different wording or of a different style. It is sufficient if the substance is the same, and if on that account the English Ministers pay greater attention to this salutary action on the part of the three sovereigns in concert.

The speeches and the conduct of these Ministers indicate plainly enough that nothing short of the fear of involving their country in a war with all Europe and of being taxed with personal responsibility therefor will induce them to listen to reasonable terms of peace. To make them more tractable, it would doubtless be well to keep this fear alive in them. There is a means of accomplishing this which is as efficacious as it is inexpensive in the fact that the sovereigns hold a considerable portion of their naval forces armed and ready for action. Let the Swedish and Danish squadrons cruise for a time beyond the Sound, and we for our part shall keep a squadron in the Mediterranean and another in the Arctic Ocean, as a defensive measure, following the example of the preceding year against foreign privateers. And as, to assist this twofold action, our squadrons which passed the winter of last year at Leghorn and at Lisbon, are to return immediately or have already returned to the Baltic, we shall thus present at the same time very respectable armaments in these different seas. The possibility of the Russian, Swedish, and Danish squadrons meeting at the same point immediately on the orders of their sovereigns will doubtless have its effect on all the belligerent Powers and will at the same time ensure the safety of the merchant navigation of our respective subjects. Therefore such a joining of forces, even before it is effected, will secure to the three Courts a very great and a very real advantage. In communicating a summary of this rescript to Mr. Sacken, we enjoined him to discuss its contents with the Danish Minister and to inform us without delay of the result of their conference. He has orders to inform you directly, so that as much time as possible may be gained in putting into execution concerted and unanimous measures, to be decided upon among us, and so that we may be in a position to give our Minister at London necessary instructions, which shall be sufficient together with those that our allies will give to their Ministers at the same Court. We enclose herewith a copy of the rescript sent to the said Mr. Sacken. You will bring it to the knowl-

edge of the Swedish Minister, and you will insist in your conversation with him upon the necessity of his Court's entering, on its part, into direct communication with the Court of Copenhagen, also for the purpose of saving time. As it is far from our intention to embarrass, in a common cause, the will and intentions of the Kings, our allies, you will not fail in your conversation with the Swedish Minister to discuss with him the sentiments of his own Court, and to receive *ad referendum* all proposals that he may submit, assuring him in advance that we shall consider them with all due respect and deference.

Prussian Declaration and Ordinance concerning Navigation and Maritime Commerce, April 30, 1781¹

His Majesty the King of Prussia, etc., in view of the almost general maritime war now taking place in the southern parts of Europe, has taken especial care and measures to procure to his subjects engaged in navigation and maritime commerce all possible security, and to that end has not only had all the belligerent Powers requested to impart to the commanders of their war-ships and ship-owners strict orders to have the Prussian flag adequately respected, and that Prussian ships bearing merchandise which, according to usages and international law, is free and not to be regarded as contraband, shall everywhere be allowed to pass unmolested and unhindered; that they shall be neither damaged nor stopped, and even less be taken to foreign ports without necessity and authority, concerning which matters they receive friendly and encouraging assurances from the respective Courts; the said Courts, in order better to observe that object, have instructed their Ambassadors residing at the Courts of the belligerent Powers, opportunely and energetically, by intercession and representation, to receive their seafaring subjects whose ships might possibly be captured and confiscated, and, as frequently happens, be robbed at sea, so that such ships may soon be released and compensated, and that legal action arising therefrom may be decided and settled as soon as possible, and with due impartiality. Now, in order that the Royal Ambassadors may properly

¹Translation. German text at Martens, *Recueil de Traités*, vol. 3, p. 284.

attend to these matters, the Royal Prussian subjects who find themselves in such situations as described, must therefore address themselves in person, or by duly authorized agent, to the Royal Ambassador accredited to the Court where the claim is to be presented, and acquaint him with the difficulty and with all the facts concerning it, that in the proper place and by his intercession he may assist them. They must not, however, rely solely upon such ministerial intervention, but must present their complaints to the admiralty and maritime courts of the country to which their ship is taken, or where they sustained injury, and with the required proofs, legally prosecute their complaints through the various courts established in the country, through authorized agents or advocates, in which case, it is to be hoped, they shall receive good legal assistance, and in the want of such assistance they can address themselves to the royal Ambassadors, in order, if necessary, to present proper complaint at every Court, according to the circumstances, and to bring about their redress.

However, in order still further to secure the navigation of the Prussian subjects, His Majesty the King of Prussia has had the request presented through his Ambassadors, to Her Majesty the Empress of all the Russias and both the other two northern maritime Powers, which three Courts, as is well known, have allied themselves in defense of maritime neutrality: that they, as Powers with which His Majesty is living in truest friendship, instruct the commanders of their war-ships, to take under their protection and convoy, such Prussian merchant ships which they may meet on the sea, as long as they remain within their sight and cannon range, in case such ships should be captured or molested by the war-ships and ship-owners of the belligerent Powers. Through a written declaration for Her Ministry, Her Imperial Majesty of all the Russias, has given assurances to His Majesty, as her confederate ally; that the commanders of her war-ships had not only been ordered to protect against molestation and attack the ships of Prussian merchants and sea-farers as belonging to a Power allied with her, and to observe most strictly the rules of neutrality as established in international law, in case they should encounter such ships, but that her Ambassadors accredited to the Courts of the belligerent Powers would be instructed that, as often as the Royal Prussian Ambassadors had cause to present claims and complaints to these Courts because of obstructions to commercial navigation of Prussian subjects, the Ambassadors should support them

through their intervention, in the name of Her Russian Imperial Majesty; that in return, Her Majesty expected His Majesty the King of Prussia to impart similar instructions to his Ambassadors at the Courts of the belligerent Powers, conformably to the maritime convention of the northern maritime Powers, and to support in all cases by emphatic intervention the representations of the Ambassadors of the northern Powers allied in behalf of maritime neutrality, in case they had cause to demand satisfaction for the subjects of their sovereigns.

His Majesty the King of Prussia has received with obliging gratitude this friendly declaration of Her Imperial Majesty and made a corresponding declaration, instructing his Ambassadors at foreign Courts accordingly. On the occasion of other maritime negotiations, His Majesty had already requested the Royal Court of Denmark to extend to Prussian merchant ships the protection of the Danish maritime Power, and in answer thereto, had received the friendly assurance that the Royal Danish war-ships would take all Prussian merchant ships under their protection, provided that these ships would conform to maritime treaties entered into between the Danish Crown and other Powers. His Majesty the King of Prussia has made a similar request of the Royal Swedish Court, and from the friendship of His Majesty the King of Sweden, expects to receive such assurances as have been received from the Empress of Russia and from the King of Denmark.

Therefore, all these circumstances are herewith announced to all royal subjects who engage in sea-faring and in maritime commerce, so that they and the ship captains may act conformably thereto; and in cases of necessity, should they be attacked, molested or captured on the sea by the war-ships and ship-owners of the belligerent nations, they may address themselves to such Russian Imperial, Royal Danish or Royal Swedish war-ships, as may be cruising near-by, ask for their protection and assistance, and as far as possible keep in touch with the fleets and convoys of these three northern maritime Powers.

In view of the fact, however, that it is merely the intention of His Majesty the King, by the above-mentioned measures to safeguard the lawful and innocent maritime commerce of his subjects, and in no way to injure the high Powers which are waging war among themselves and with which His Majesty is living in friendship, nor to favor any trade which might be injurious to them or unlawful, there-

fore, all royal subjects engaging in maritime commerce and navigation, shall so organize their commerce and navigation that they will observe a strict neutrality, in accordance with natural law or the generally accepted rights of nations. But, as there is a difference between the different treaties which one and other Courts have entered into, therefore the royal Prussian subjects shall preferably conform themselves to the well-known declaration made by Her Imperial Majesty of all the Russias during the preceding year to the belligerent Powers, and to the ordinance issued by Her Majesty, May 8, 1760, to her Board of Trade, which His Majesty regards as most conformable to the law of nations and to their own rights, and carry on their maritime trade in accordance therewith. In consequence, His Majesty the King of Prussia hereby commands all his subjects who engage in navigation and maritime trade:

ARTICLE 1

That they shall not take part in the present war under any pretext nor, under the Prussian flag, supply the belligerent Powers with any merchandise which is generally regarded as contraband and forbidden, or with real war necessities such as cannon, mortars, bombs, grenades, guns, pistols, bullets, flint-stones, fuses, powder, saltpeter, sulphur, pikes, swords and saddles., Of such they shall not carry more on their merchant ships than required for their own use.

ARTICLE 2

Prussian navigators may, in Prussian ships carry to the belligerent and neutral nations all other goods which, apart from those indicated in the preceding article, are not forbidden nor real war necessities, especially the products of any royal province; and His Majesty expects from the sense of justice and of friendship of the belligerent Powers that they will not permit their armed ships to molest and to seize Prussian ships carrying masts, timber, hemp, tar, corn and other like articles, not real war necessities, but which may subsequently be used to such ends, and which constitute the foremost and almost the only articles of Prussian trade; otherwise, Prussian maritime commerce would be destroyed; and His Majesty can not be expected to consent that the said commerce be stopped or allowed to stagnate because of the war between the belligerents. On the ground of these

same principles it is hoped that the belligerent Powers will let pass free and unhindered, that they will not appropriate and seize, nor confiscate the unprohibited merchandise and cargoes of Prussian subjects which might be found aboard the ships of the belligerent nations, nor the unprohibited merchandise of the belligerent nations which is on board Prussian ships, and in all such cases His Majesty will as far as possible protect his subjects, will personally see to it and cautiously act to the end that their merchandise and cargoes be shipped on Prussian ships under the Prussian flag, and not to engage to a large extent in the transportation of merchandise and goods belonging to the belligerent nations, and to guard against all possible misunderstandings and mishaps, especially to carry on a purely legitimate Prussian maritime trade.

ARTICLE 3

All Prussian ships sailing on the sea must provide themselves with regular passes and attestations from the boards of the admiralty, of the war and of the authorities of each province, or from the magistrates of each locality, in the customary way, as well as with the usual charter document, bill of lading and other certificates which must state the quality and quantity of the cargo, the name of the owner and consignee together with that of its destination. These maritime documents must be clear and unequivocal, must be at all times on board of each ship, and under no circumstances ever be thrown overboard; and especially, every skipper must guard against false maritime papers.

ARTICLE 4

If loaded in a foreign port, every Prussian ship must there provide itself with the required and customary local maritime papers, in order to prove its identity everywhere, to what nation it belongs, the cargo it carries, whence it comes and whither it is bound.

ARTICLE 5

There shall be no maritime officers and employees on board Prussian ships, nor shall more than one-third of the sailors belong to the belligerent nations.

ARTICLE 6

All Prussian navigators are hereby forbidden to carry cargoes and merchandise of whatever nature, to such localities and parts as are

really besieged, or closely blockaded and closed by one of the belligerent Powers.

ARTICLE 13

Prussian subjects, sea-farers and merchants shall not lend their names to foreign nations, but shall carry on their commerce as is permissible in accordance with the rights and customs of the peoples, in such manner as not to cause injury to any one of the belligerent nations, nor to give cause to any one of the belligerent nations to enter a rightful complaint.

Those royal subjects who conform themselves strictly to this ordinance may expect all possible protection and assistance from His Royal Majesty; those, however, who act against this ordinance may not expect such protection and assistance, but must remain personally responsible for all danger and loss they might incur in so acting.

Given at Berlin, April 30, 1781.

By special command of His Majesty the King.

E. F. v. HERZBERG
FINKENSTEIN

Convention between Russia and Prussia for the Maintenance of the Freedom of Commerce and Navigation of Neutral Nations, and Separate Articles, May 19, 1781¹

The justice and equity of principles which Her Majesty the Empress of all the Russias adopted and acknowledged before Europe by her declaration of February 28, 1780, transmitted to all the belligerent Powers, have determined His Majesty the King of Prussia to take part as directly as possible in the glorious system of neutrality which has resulted therefrom, with the universal commendation of all the nations, not only by acknowledging these principles which are founded on justice and the law of nations, but also by acceding thereto and by guaranteeing them by a formal act. This determination of His Prussian Majesty meeting entirely with the desire of Her Imperial Majesty

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 245. Ratifications exchanged at St. Petersburg, June 15, 1781.

of all the Russias to give them a stable and solid basis by having them solemnly recognized by all the Powers as the only principles capable of establishing security of commerce and of navigation for neutral nations in general, Their Majesties have seen fit with one accord to enter into negotiations regarding a subject in which they are both equally interested, in so far as it can work to the welfare and advantage of their respective subjects, and to this end they have chosen, appointed, and authorized, to wit: His Majesty the King of Prussia, the Count von Goertz, his Minister of State, and his Minister Extraordinary at the Imperial Court of Russia; and Her Imperial Majesty of all the Russias, Nikita Count Panin, her Privy Councilor, Senator, Chamberlain, and Chevalier of the Orders of St. Andrew, of St. Alexander Newsky, and of St. Anne; John Count d'Osternann, her Vice Chancellor, Privy Councilor, and Chevalier of the Orders of St. Alexander Newsky and of St. Anne; Alexander de Besborodka, Major General of her Armies and Colonel commanding the Kiovia Regiment of Militia of Little Russia; and Pierre de Bacounin, her Councilor of State, Member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne; who having exchanged their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE 1

Their Majesties being sincerely resolved to maintain relations of friendship and of the most perfect harmony with the Powers now at war, and to continue to observe the strictest and the most scrupulous neutrality, declare their desire to see to the most rigorous execution of the prohibition of commerce in contraband by their subjects, with any of the Powers now at war or which may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what is to be considered contraband, Her Majesty the Empress of all the Russias has declared that she recognizes as such only the goods included under this head in Articles 10 and 11 of her treaty of commerce with Great Britain, whose obligations, which are founded entirely on the natural law, she has extended to the Crowns of France and Spain, which countries have not heretofore bound themselves with her Empire by any engagement relating purely to commerce. Since there likewise

exists no engagements of this nature between His Prussian Majesty and the Powers now at war, he declares for his part, that, in this respect, he also desires to bind himself with them by the obligations of the aforesaid treaty of commerce between Russia and Great Britain, with specific reference to Articles 10 and 11 of that treaty.

ARTICLE 3

Contraband determined and excluded from commerce, in conformity with Articles 10 and 11 of the aforesaid treaty concluded between Russia and Great Britain on June 20, 1766, His Majesty the King of Prussia and Her Imperial Majesty of all the Russias understand and desire that all other trade be and remain absolutely free on the basis of the general principles of the natural law, which Her Majesty the Empress has solemnly demanded, and of which freedom of commerce and of navigation, as well as the rights of neutral peoples, is a direct consequence; and in order that they may not depend upon an arbitrary interpretation, suggested by isolated and temporary interests, Her Imperial Majesty of all the Russias has adopted and established as a basis the four following points:

(1) That every vessel may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to the subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband.

(3) That to determine what constitutes a blockaded port, such designation shall apply only to a port where the attacking Power has disposed its vessels sufficiently near in such a way as to render access thereto dangerous.

(4) That neutral vessels may be stopped only for just cause and for acts that are perfectly evident; that their cases shall be decided without delay; that the procedure shall always be uniform, prompt, and legal, and that in every instance, besides the indemnities allowed to those which have suffered loss without having been at fault, complete satisfaction shall be given for the insult to the flag.

His Majesty the King of Prussia accedes to these principles, adopts them also, and guarantees them in the most positive manner, binding himself to uphold them and demand their observance whenever the interests of the commerce and navigation of the subjects of the two high contracting Parties may so require.

ARTICLE 4

In return for this accession Her Majesty the Empress of all the Russias will continue to protect the commerce and navigation of the Prussians with her fleets, as she has already agreed to do at the request of His Majesty the King of Prussia, having had orders sent to all the commanding officers of her squadrons to protect and defend against all insults and molestation the merchant ships of Russia, which happen to be in their course, as being the vessels of a friendly and allied Power that strictly observes neutrality, it being understood, however, that the aforesaid vessels shall not be used for any illicit commerce, or for any purpose that is contrary to the rules of the strictest and most scrupulous neutrality.

ARTICLE 5

If it should happen, in spite of the greatest care on the part of the two contracting Powers for the observance by them of the most complete neutrality, that the merchant vessels of His Majesty the King of Prussia and of Her Imperial Majesty of all the Russias should be insulted, pillaged, or taken by the war-ships or private ship-owners of any of the Powers at war, then the Minister of the injured party at the Court, whose war-ships or private ship-owners shall have committed such acts, shall make representations, shall make claim for the captured merchant vessel, and shall insist upon suitable indemnities, never losing sight of reparation for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaint in the most energetic and efficacious manner, and they will thus act with one accord. If justice should be refused, or if it should be postponed from time to time, then Their Majesties shall employ reprisals the Power so refusing and they shall continually consult with each other as to the most appropriate method for carrying out such reprisals.

ARTICLE 6

If it should happen that either of the two contracting Powers or both of them, because of or in contempt of the present act, or for any other cause relating thereto, should be disturbed, molested, or attacked, it has been likewise agreed that the two Powers shall make common cause for their mutual defense, and shall work and act in

concert in order to secure entire and full satisfaction, both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 7

The present act shall have no retroactive effect, and therefore no action shall be taken with respect to differences that have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral countries of Europe in general.

ARTICLE 8

All the stipulations set forth in the present act must be regarded as permanent and as constituting the law in the matter of commerce and of navigation, and whenever there is occasion to determine the rights of neutral nations.

ARTICLE 9

The principle aim and object of this act being to ensure general freedom of commerce and of navigation, His Prussian Majesty and Her Imperial Majesty of all the Russias agree and engage in advance to allow other neutral Powers to accede hereto, which by adopting the principles herein contained shall share its obligations as well as its advantages.

ARTICLE 10

In order that the Powers at war may not allege their ignorance of the engagements undertaken by Their said Majesties, they shall communicate in a friendly way to the said Powers these engagements, which are in nowise hostile to them nor to the detriment of any one of them, but aim solely to ensure security of commerce and of navigation to their respective subjects.

ARTICLE 11

The present act shall be ratified by the two contracting Parties, and the ratifications thereof shall be exchanged within six weeks from the day of the signing thereof, or sooner if possible.

In faith whereof we, the plenipotentiaries, by virtue of our full powers have signed and have hereto affixed the seals of our arms.

Done at St. Petersburg, May 8, 1781.¹

[L.S.] E. COUNT VON GOERTZ

[L.S.] C. N. PANIN

[L.S.] C. JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BESBORODKA

[L.S.] PIERRE BACOUNIN

SEPARATE ARTICLES

ARTICLE 1

As His Majesty the King of Prussia and Her Majesty the Empress of all the Russias are equally interested in preserving the security and tranquillity of the Baltic Sea, and in protecting it from the disturbances of war and privateering, a system the more just and natural because the Powers whose States border thereon enjoy the most profound peace. They have mutually agreed to maintain that it is a closed sea, incontestably such by its geographical situation, in which all nations must and may navigate in peace and enjoy all the advantages of perfect tranquillity, and to this end to adopt among themselves measures capable of guaranteeing this sea and its coasts against all hostilities, piracies, and acts of violence.

ARTICLE 2

Since stress of weather or some other circumstance may force Russian vessels to take refuge in a Prussian port, either to pass the winter, to make repairs, or to escape the storm, His Majesty the King of Prussia engages to see to it that they are received and treated as vessels of a friendly and closely allied Power, and that are furnished, at a just and reasonable price, with the necessary materials for repairs, with the provisions needed by the crew for its sustenance; in a word, to see that all necessary arrangements are made in order that these vessels and their crews may be treated and cared for in the most friendly manner.

ARTICLE 3

At the more or less remote time when peace shall be restored between the belligerent Powers, His Majesty the King of Prussia and Her

¹May 19, 1781, new style.

Majesty the Empress of all the Russias shall use their best efforts with the maritime powers in general to bring about the universal acceptance and recognition in all naval wars, which may arise hereafter, of the system of neutrality and the principles established in the present act, forming the basis of a universal maritime code.

ARTICLE 4

As soon as this act shall have been ratified and the exchange of ratifications shall have taken place, the high contracting Powers shall take care to communicate it, with the exception of the separate articles, in good faith, conjointly and with one accord, through their Ministers accredited to foreign Courts, and specifically those Courts which are now at war.

These separate articles shall be considered and regarded as forming a part of the act itself and shall have the same force and effect as though they had been inserted word for word in the said act, concluded the same day between the two high contracting Parties. They shall be ratified in the same way and ratifications thereof shall be exchanged at the same time.

In faith whereof we, the plenipotentiaries, by virtue of our full powers, have signed them and have affixed thereto the seals of our arms.

Done at St. Petersburg, May 8, 1781.

[L.S.] COUNT VON GOERTZ

[L.S.] C. N. PANIN

[L.S.] C. JEAN D'OSTERMANN

[L.S.] ALEXANDRE DE BESBORODKA

[L.S.] PIERRE BACOUNIN

Treaty between His Majesty the Emperor of the Romans and Her Majesty the Empress of Russia relative to Armed Neutrality, July 10, 1781¹

As the result of the war which has just broken out between Great Britain on the one hand, and France and Spain on the other hand, the

¹Translation. Italian text at Martens, *Recueil de Traité*s, vol. 3, p. 252.

commerce and navigation of neutral Powers have suffered and are suffering considerable injury; in consequence, His Majesty the Emperor of the Romans and Her Majesty the Empress of Russia, by reason of their assiduous efforts to procure with dignity and diligence the security and prosperity of their subjects and with due regard for the rights of nations in general, have deemed it necessary in the present condition of affairs to regulate their conduct in accordance with the said principles, the Empress of Russia by means of her declaration of February 28, 1780, addressed to all the belligerent Powers, exhibited to the eyes of all Europe the fundamental rules inferred from the primitive right of all the peoples which Her Majesty claims and adopts as bases of her conduct during the present war. This effort of Her Majesty directed to watch over the upholding of rights common to all nations having obtained the approval of all the neutral Powers, because it deals with the defense of their most essential interests, the point has been reached to define and establish for all present and future time a permanent and invariable system, in harmony with the prerogatives, conditions and obligations of a strict neutrality; and His Majesty the King of Denmark and Norway, His Majesty the King of Sweden, the Republic of Holland and other most respectable Powers having approved this system, there has come into being the accord and unanimity by which the above-mentioned Emperor of the Romans and the Empress of Russia have resolved further to strengthen and secure their firm and constant friendship and their mutual confidence, in conformity with the interests of their realms and States, by means of a formal convention. To that end, Their Imperial Majesties have stipulated and concluded the following articles:

ARTICLE 1

The above-mentioned Imperial Majesties are sincerely determined for ever to maintain the most steadfast and sincere friendship as most useful to the House of Austria nor less so to the Empire of Russia; to maintain reciprocal concord and union; to maintain friendly relations with the Powers actually at war and to observe the strictest neutrality, declaring at this time their readiness firmly to bring it about that the prohibition of the trade in articles of contraband with the States now engaged in hostilities and with those which may subsequently be involved therein, shall be strictly observed by their respective subjects.

ARTICLE 2

In order to remove any misunderstanding or equivocation with regard to the term *contraband*, His Majesty the Emperor and Her Majesty the Empress of Russia declare that they will only recognize as articles of *contraband* those which are included as such in treaties existing between the above-mentioned Courts. Her Majesty the Empress of Russia as a maritime Power conforms entirely in this to its treaty of commerce with Great Britain, and furthermore, extends the obligations of the same which are wholly based upon the natural law, to the Crowns of France and Spain which at the date of the present convention have no treaty of commerce with her empire. His Majesty the Emperor will act in like manner toward France and England by reason of the absence of any agreement determining any conditions upon this matter.

ARTICLE 3

Having in this manner determined and defined what is to be understood as *contraband* in conformity to the treaties and conventions between the high contracting Parties and the belligerent Powers, and especially in the treaty stipulated between Russia and Great Britain of June 20, 1766,¹ it is the intention of His Majesty the Emperor and of the Empress of Russia that all other articles of commerce be and remain free to their respective subjects. In their declarations addressed to the belligerent Powers, Their Majesties have already based themselves upon the general principles of the natural law from which derive the freedom of commerce and of navigation as legitimate rights of neutral nations, and they have likewise resolved that all the other Courts which have approved the proposed armed neutrality, shall no more depend on arbitrary interpretation, prompted by partial and momentary interests. To that end, they have agreed upon the following:

(1) That any vessel flying the Russian flag, or the Imperial and Tuscan flag, be permitted to navigate from one port to another, and along the coasts of the belligerent Powers.

(2) That the goods belonging to the subjects of the above-mentioned belligerent Powers shall be free upon neutral vessels, that they may not be confiscated, nor be seized by force, excepting articles of *contraband*.

¹Not printed.

(3) That in order to determine what rule shall be observed relative to a blockaded port, a port shall only be regarded as such where enemy vessels have taken a permanent station.

(4) Neutral vessels may not be stopped, except for just reasons and with evident proof, and adjudged without loss of time; legal actions shall be expedited and in uniform manner according to maritime law, and for any injury sustained without good cause, a claim shall be presented by concerted agreement on the part of Their Majesties, and besides demanding reparation for the injury done, full satisfaction shall be exacted for the insult done their flag.

ARTICLE 4

In order to protect the general commerce of their subjects founded upon just and certain principles, Her Majesty the Empress of Russia has resolved to equip a proportionate number of vessels and frigates to act as escort to merchant vessels as may be required by the urgencies of commerce, and they may come to shore and remain at their pleasure in all the ports subject to the House of Austria, and especially in the ports of the Flanders.

ARTICLE 5

In case the merchant ships of the contracting Parties should be on the sea without being escorted by an armed vessel, and hence, in need, could not obtain protection, the commander of war vessels of Her Majesty the Empress of the Russias, whenever the request is made, shall without distinction grant all necessary assistance, provided the vessel have not engaged in an illicit commerce, contrary to the laws of neutrality.

ARTICLE 6

The present convention shall not be retroactive, and in consequence, it shall not apply to disputes which may have arisen before the conclusion of the same, because the questions might not concern the hostilities still in course and which tend to oppress all the neutral nations.

ARTICLE 7

If, notwithstanding the diligent and friendly solicitude of the two contracting Parties and the strictest observance of neutrality, Russian or Austrian merchant ships should suffer insults, pillaging or seizure

by war vessels, or ship-owners of one of the belligerent Powers, then the Minister of the offended party, together with the Minister of the confederated party shall address vigorous representations to the Court whose war vessels may have committed the attack, demand the release of the seized vessels, insist upon a proper satisfaction and attend to the dignity of the respective flag. The above-mentioned Minister of the other party shall support this recourse in the most efficacious and vigorous manner and if, from time to time, remedy to the inconvenience is refused or deferred, Their Majesties will in such case exercise the right of reprisal against the Power denying them execution of justice, and will immediately devise the most appropriate means to execute such reprisals.

ARTICLE 8

If the one or the other of the two contracting Parties, or both at the same time, should be attacked as a result of this convention which is not intended to give offense to any one, or for any other reason whatever relating thereto should be troubled, molested or attacked, they have resolved to unite their efforts to defend themselves, namely, Her Majesty the Empress of all the Russias will put in operation her maritime forces in concert with the other Courts which have concurred in the treaty of armed neutrality, His Majesty the Emperor furnishing troops and money according to the urgency of the case, for the sole end of procuring a satisfactory reparation both for the insult shown their flag and for the losses occasioned to their subjects.

ARTICLE 9

This convention is concluded and shall remain in force for the duration of the present war, and the obligations contracted by reason of the same shall serve as bases for all posterior treaties that may be entered into in the future, according to the events and on the occasion of new wars that might arise and upset the tranquillity of Europe. All else agreed upon herein shall be considered as permanent and invariable both as to matters pertaining to merchantmen and to maritime questions and shall have force of law for the determination of the rights of neutral nations.

ARTICLE 10

As it is the aim and object of the above-mentioned convention to safeguard the freedom of commerce and navigation, Their Majesties

the Emperor of the Romans and the Empress of all Russias have agreed to request all the Powers which until now have not done so to accede to the convention in whose advantages they may share, always and only on the ground of defense, and never of offense.

ARTICLE 11

In order that the Powers engaged in the war may not be ignorant of the force of the obligations contracted by the two Imperial Courts of Petersburg and Vienna, the high contracting Parties shall notify to them, in the most friendly manner, the measures adopted, measures which are the less hostile because their object is far from occasioning injury to anyone, tending solely to protect the commerce of the respective realms and peoples.

The present convention shall be ratified by the two contracting Parties, and the ratifications thereof exchanged in good and due form within a period of ten weeks, in faith of which, etc.

VIENNA, *July 10, 1781.*

Act of Accession of His Majesty the Emperor of the Romans to the Maritime Association, October 9, 1781¹

Joseph II, by the grace of God Emperor of the Romans, ever August, King of Germany and of Jerusalem, of Hungary and Bohemia, of Dalmatia, Croatia, Slavonia and Galicia, and of Lodomoria, Archduke of Austria, Duke of Burgundy and of Lorraine, Grand Duke of Tuscany, Grand Prince of Transylvania, Duke of Milan, of Mantua, of Parma, and Count of Hapsburg, of Flanders, of Tyrol, etc., etc., etc.

Having been amicably invited by Her Majesty the Empress of all the Russias to join with her in the consolidation of the principles of neutrality on the sea, looking to the maintenance of the freedom of maritime commerce and of the navigation of neutral Powers, which she has set forth in her declaration of February 28, 1780, transmitted in her name to the belligerent Powers, which principles are in substance :

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 257.

That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

That effects belonging to the subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

That nothing shall be considered contraband except the goods enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.

That to determine what constitutes a blockaded port, none shall be deemed such except a port where the attacking Power shall dispose his vessels sufficiently near and in such a way as to render access thereto clearly dangerous.

Finally, that these principles shall serve as the rule in proceedings and judgments as to the legality of prizes.

And Her said Imperial Majesty of all the Russias having proposed to us to this end that we manifest by a formal act of accession, not only our complete adhesion to these same principles, but also our immediate cooperation in measures to ensure their execution, which we, on our part, shall adopt by contracting mutually with Her said Majesty the following engagements and stipulations, to wit:

(1) That the strictest neutrality shall be observed by both, that the prohibitions against commerce in contraband on the part of their respective subjects with any one of the Powers now at war, or who may hereafter enter the war, shall be most rigorously enforced.

(2) That if, in spite of all the care exercised to this end, the merchant ships of either of the two Powers should be taken or insulted by any of the vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other, and if justice should be refused upon these complaints, they shall continue to take counsel with each other as to the method most likely to secure it through just reprisals.

(3) That if it should happen that either of the two Powers or both of them, as a result of or in contempt of the present agreement, should be disturbed, molested, or attacked, they would then make common cause for their mutual defense and would work in concert to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

(4) That these stipulations shall be considered by both as permanent and as being the rule whenever there may be occasion to pass upon the rights of neutrality.

(5) That the two Powers shall communicate in a friendly way their present mutual agreement to all the Powers that are now at war.

Since it is our wish, because of the sincere friendship which happily unites us with Her Majesty the Empress of all the Russias, as well as for the welfare of Europe in general and of our countries and subjects in particular, to contribute our share to the execution of views, principles, and measures, which are as salutary as they are in accord with the clearest conceptions of the law of nations, have resolved to accede thereto, and we accede formally by virtue of the present act, promising and binding ourselves, just as Her Majesty the Empress of all the Russias binds herself with respect to us, to observe, to execute and to guarantee all the points and stipulations aforesaid.

In faith whereof we have signed the present act with our own hand and have affixed thereto our seal.

Given at Vienna, October 9, 1781.

KAUNITZ RIETBERG

[L.S.] JOSEPH
ANT. SPIELMANN

Act of Her Imperial Majesty of Russia accepting the Accession of the Emperor of the Romans, October 19, 1781¹

We, Catherine II, by the grace of God Empress and Autocrat of all the Russias, of Moscovy, Kiovia, Wladimiria, Novgorod, Czarina of Casan, Czarina of Astrakhan, Czarina of Siberia, Lady of Plescau, and Grand Duchess of Smolensk, Duchess of Estonia, of Livonia, Carelia, Twer, Ingoria, Parmia, Wiatka, Bolgaria, and others, Lady and Grand Duchess of Lower Novgorod, of Czernigovia, Kasan, Rostor, Iaroslav, Belo, Oseria, Udoria, Obdoria, Condania, Ruler of all the region of the North, Lady of Iveria, and Hereditary Princess and Sovereign of the Czars of Cartalinia and Georgia, as well as of Cabardinia, of the Princes of Czircassia, of Gorsky, and others: Having amicably invited His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, to cooperate with us in consolidating the principles of neutral-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 260. The act of accession was exchanged for the act of acceptance on October 19th by the respective plenipotentiaries.

ity on the seas, tending to the maintenance of freedom of the maritime commerce and the navigation of neutral Powers, as set forth by us in our declaration of February 28, 1780, delivered in our behalf to the belligerent Powers, which principles state in substance :

That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

That effects belonging to subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

That nothing shall be considered as contraband except the goods specified in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1766.

That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed its vessels sufficiently near as to render access thereto dangerous.

Finally, that these principles shall be regarded as the rule in proceedings and judgments as to the legality of prizes.

And His said Imperial and Royal Apostolic Majesty having consented, for this purpose, to manifest by a formal act of accession, not only his complete adhesion to the said principles, but also his immediate cooperation in the measures to ensure their execution, which we shall adopt on our part, mutually contracting with His said Imperial and Royal Apostolic Majesty the following engagements and stipulations, to wit :

(1) That both parties shall continue to observe the strictest neutrality and shall see to the rigorous execution of the prohibitions against commerce in contraband on the part of their respective subjects with any of the Powers already at war and that may hereafter enter therein.

(2) That if in spite of the care exercised to this end merchant ships of either of the two Powers should be taken or insulted by any vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other, and if justice is refused on these complaints, they shall consult with each other immediately as to the best method of securing justice through just reprisals.

(3) That if either or both of the two Powers, as the result of or in contempt of the present agreement, should be disturbed, molested, or attacked, they shall then make common cause for their mutual defense, and shall work in concert to secure full and complete satis-

faction, both for the insult to their flag and for the losses suffered by their subjects.

(4) That these stipulations shall be considered by both sides as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrality.

(5) That the two Powers shall communicate in a friendly way their present mutual agreement to all the Powers now at war.

As a result of the sincere friendship that happily unites us with His Majesty the Emperor, as well as for the welfare of Europe in general, and of our countries and subjects in particular, we formally accept by virtue of the present act the accession of His Majesty the Emperor of the Romans, King of Hungary and of Bohemia, to the views, principles and measures, as salutary as they are in accord with the most self-evident conceptions of the law of nations, promising and solemnly binding ourself, just as His Majesty the Emperor binds himself with us, to observe, to execute, and to guarantee all the points and stipulations aforesaid.

In faith whereof we have signed the present act and have hereto affixed our seal.

Given at St. Petersburg, October 19, 1781, and the twentieth year of our reign.

[L.S.] CATHERINE
COUNT JOHN D'OSTERMANN

Prussian Declaration and Ordinance concerning Navigation, November 3, 1781¹

His Royal Majesty the King of Prussia has indeed, by his first thorough-going declaration of April 30 of the present year already sufficiently acquainted every one with the fact that during the present war His Majesty intends to have a strict neutrality observed and navigation of his subjects so conducted that in availing themselves of their natural freedom, navigation may not be misused to such injury of the belligerent Powers as would warrant the latter, for good reasons, to

¹Translation. German text at Martens, *Recueil de Traités*, vol. 3, p. 290.

complain. As it is, however, being said publicly and in some localities complaint is being made, that foreign ships, even ships belonging to the belligerent nations make use of the royal flag, and under its protection carry on an illicit trade, His Royal Majesty declares solemnly, in consequence, that the use of his flag has been granted to no one and that no passes will be issued to any one, except to his veritable and true subjects who as such are really residing in his lands and are owners of houses, property and possessions, and that accordingly, if other and foreign shippers, such as are not provided with Prussian passes, make use of the Prussian flag which His Majesty can not prevent on the open sea, His Majesty will not afford them either protection or assistance, but leave them to their own fate. His Royal Majesty can therefore not be held responsible for such use of the Prussian flag, which His Majesty has not authorized and can not readily prevent; and His Majesty expects therefore from the sense of justice of the belligerent Powers that they will not hold the veritable Prussian sea-farers accountable for such use of his flag, nor make them suffer therefor.

In view of the fact that safe navigation and observance of strict neutrality do not depend so much upon the flag as upon the genuine passes which sea-farers, to establish their identity, must secure from their national authorities, therefore, to obviate any and every possible misuse, His Royal Majesty directs and commands herewith, earnestly and strictly, all his subjects who carry on navigation and maritime trade, that, if they intend to send forth ships and ship cargoes to distant seas, lakes, coasts and regions of the earth, they no longer shall, as customary hitherto, apply for passes, to magistrates or subordinate boards, but at Berlin, to the royal Department for Foreign Affairs where they shall be supplied with passes under the royal seal, provided that they have in advance secured the customary bills of lading and statements regarding the ship's cargo, together with dependable proof showing that the ship out-fitters and owners all of whose names must be stated specifically, are veritable and real royal Prussian subjects, authenticated by attestations from the magistrates and war and domain boards of each province, and thus have qualified themselves to receive a royal passport. From this ordinance remain excluded those Prussian shippers navigating in the Baltic Sea and not outside the Oere-sound and the Great and Lesser Belt; to save time, these navigators may secure passes from the hitherto customary places, and those who engage in short trips in the North Sea from the

ports of East Friesland, to the ports of Great Britain and the United Netherlands, and for want of time and because of the great distance and inconsiderable cargoes can not conveniently secure passes from Berlin, may as hitherto apply for and receive passes from the magistrate of the city of Emden and from the royal war and domain boards of the principality of East Friesland under the proper supervision of the latter.

As this ordinance is made known for the information and observance of all royal Prussian subjects, in all other respects, the first royal declaration of April 30 is to be observed and is hereby renewed and confirmed, so that both royal ordinances shall serve as prescription and line of conduct to the royal subjects who engage in navigation and maritime commerce.

Given at Berlin, November 3, 1781.

By special order of His Royal Majesty.

FINKENSTEIN

E. F. v. HERZBERG

Detailed Elucidation of the Prussian Ordinances of April 30 and November 3, 1781, concerning Commerce and Navigation, December 8, 1781¹

Through His Royal Majesty's ordinances of April 30 and November 3 of this year, the royal subjects have already been advised in what manner, for their greater security, they should organize their navigation and maritime commerce; in view of the fact, however, that certain doubts still exist and certain questions have arisen in regard thereto, therefore, in order to remove these doubts and dispose of these questions, in the name and on the part of His Royal Majesty, the following is additionally established, ordered and published for the guidance of royal Prussian subjects, engaging in navigation and maritime commerce:

ARTICLE 1

It is self-evident that, since Prussian ships which put to sea before the issuance of the ordinance of November 3, could not have pro-

¹Translation. German text at Martens, *Recueil de Traités*, vol. 3, p. 293.

vided themselves with the court passes prescribed therein by the royal Ministry for Foreign Affairs, the lack of such passes can not accrue to their disadvantage in any courts of justice nor in any other places, and that the hitherto customary passes with which they put to sea must retain their force and validity and ensure those ships up to the time of their return to Prussian ports. In order, however, still further to obviate all difficulties, it is hereby established, that the necessity of securing court passes from Berlin direct, shall go in force, beginning only with January 1, 1782, so that every one may have sufficient time to procure such passes.

ARTICLE 2

It remains established that small ships not carrying more than 100 tons burthen, as well as such as navigate only in the Baltic and North Sea, and not outside of the channel separating France and England, need not secure their passes from Berlin if they do not find it convenient to do so, but at their pleasure as hitherto, in order to save time, from the admiralties and war and domain boards of each province, as well as from the magistrates of the cities; and to that end, the said boards are hereby strictly exhorted, to exercise the greatest care, to prevent all misuse, and in strict compliance with the royal ordinances, that passes shall, in consequence, be issued to none but veritable and real royal subjects. By the declaration of November 3, it is solely his Royal Majesty's fatherly intention to procure the greater security through the maritime passes to be issued through His Ministry of Foreign Affairs which is best acquainted with the general state of affairs, to those Prussian ships which sail beyond the channel into the great ocean and engage in navigation and maritime commerce in those distant seas, countries and coasts, and to prevent, as far as possible, prejudicial incidents.

ARTICLE 3

As the skippers, before their ships have taken their full cargo on board, can not properly send to Berlin complete bills of lading of their cargoes, therefore, those requiring direct royal court passes, shall not be required to procure more than general certificates and vouchers from the admiralties, boards and magistrates regarding the ownership of the vessel, and in case the pass is also to indicate the cargo of the ship, then the quality of the cargo of which it consists, all of which will suffice to form judgment whether the cargo is free

and unprohibited, and whether thereupon the court may issue passes; on the other hand, the exact, specific and complete bills of lading and attestations regarding ship cargoes and the quantity of each article may be procured and solemnized in the manner hitherto customary, only in the place where the freight is taken on board, or in the same province, from the admiralties, boards and magistrates.

ARTICLE 4

To stimulate national commerce, the royal Prussian subjects have been advised by the ordinance of April 30, as far as possible, to carry on their navigation and maritime commerce for their own account and with their own merchandise, and in the ordinance of November 3 it is stated that to obtain the court passes, the required attestations should be provided, and that the ship out-fitters and the owners of the ships and cargoes should be royal Prussian subjects. Since, however, the former was mere advice, and the latter was required for the purpose of greater caution, royal Prussian subjects, who are provided with other proper maritime passes, are always free and unhindered, in virtue of the declaration referred to as of April 30, to carry merchandise and goods of foreign and even of the belligerent nations which according to the rights and usages of the peoples and of the second article of the declaration of April 30, are permitted and unprohibited, to regions and places not besieged or closely blockaded, and in consequence, according to the principles accepted and published by His Royal Majesty and his high authorities, royal Prussian subjects will not in such cases fail of His Majesty's protection and assistance, all of which, in order to remove all misinterpretation of the ordinance of November 3, is hereby declared.

ARTICLE 5

The commanders and officials of Prussian ships when landing in ports and places where royal consuls reside, shall submit their maritime passes to the latter and have it certified by them that the ships are still possessed of such passes as were issued to them.

ARTICLE 6

The said commanders will do well to have with them on board ship the royal declarations and ordinances of April 30 and November 3

together with the present explanatory ordinance and their passes, on the one hand, to be guided thereby, and on the other, if necessary and serviceable, to present their orders and thus be able to prove their identity. This ordinance and declaration, as well as the declarations of April 30 and November 3 which are renewed and at the same time interpreted by this present one serves especially as guidance for the royal Prussian subjects who engage in navigation and maritime commerce. If under this declaration and ordinance they should nevertheless commit some error and not be provided with the required passes, the commanders of the armed ships of the belligerent nations shall not be entitled either to stop or capture them on that account, provided they have not acted contrary to the laws of neutrality and of nations accepted by His Majessty, but shall be answerable for such conduct to His Royal Majesty alone.

Given at Berlin, December 8, 1781.

By special command of His Royal Majesty.

E. F. v. HERZBERG
FINKENSTEIN

Convention between Russia and Portugal for the Maintenance of the Freedom of Neutral Navigation and Commerce, July 13, 1782¹

Her Imperial Majesty of all the Russias having invited Her Majesty the Queen of Portugal to cooperate with her in the consolidation of the principles of neutrality on the sea and in the maintenance of freedom of the maritime commerce and the navigation of neutral Powers, in conformity with her declaration of February 28, 1780, transmitted in her name to the belligerent Powers; the Queen, because of the sincere friendship uniting Her Imperial Majesty to Her Most Faithful Majesty, as well as for the interest of Europe in general and of her countries and subjects in particular, wishes to contribute her share to the execution of the principles and measures, which are as salutary as they are in accord with the clearest conceptions of the law of nations. And therefore she has determined to appoint, in concert with Her Majesty the Queen of Portugal, plenipotentiaries, and to

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 263.

instruct them to conclude a convention, the spirit and content of which shall, in all respects, be in accord with these same intentions.

To this end Their said Majesties have chosen, appointed, and authorized, Her Imperial Majesty of all the Russias, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, Senator, and Chevalier of the Orders of St. Alexander Nevsky and of St. Anne; Alexander Bezborodko, Major General of her Armies, Member of the Department of Foreign Affairs, and Colonel Commanding the Kiovia Regiment of Militia of Little Russia; and Pierre de Bacounin, her Councilor of State, Member of the Department of Foreign Affairs, and Chevalier of the Order of St. Anne: and Her Majesty the Queen of Portugal, Francis Joseph d'Horta-Machado of her Council, and her Minister Plenipotentiary at the Imperial Court of Russia; who after having exchanged their full powers, found to be in good and due form, have agreed on the following articles:

ARTICLE 1

Her Majesty the Empress of all the Russias and Her Most Faithful Majesty, convinced of the solidity and the indisputable self-evidence of the principles set forth in the aforesaid declaration of February 28, 1780, which may be reduced in substance to the five following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects and merchandise belonging to the subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband merchandise.

(3) That nothing shall be considered as such except the goods enumerated in Articles 10 and 11 of the treaty of commerce concluded between Russia and Great Britain on June 20, 1776.

(4) That to determine what constitutes a blockaded port, none shall be considered as such except a port where the attacking Power shall have disposed a proportionate number of vessels near enough to make access thereto dangerous.

(5) Finally, that these principles may serve as the rule in proceedings and judgments as to the legality of prizes.

Their Majesties declare that, not only do they fully adhere to the same principles, but that on all occasions they will cooperate effectually to maintain them in all their force and effect, and that they will see to their strict enforcement.

ARTICLE 2

The present convention shall not, in any respect, impair the force of treaties now existing between the Court of Russia or of Portugal and any other Court of Europe whatsoever. But those treaties and the stipulations therein contained shall continue to have the same binding force on both parties as in the past, and this convention can never invalidate them, still less infringe upon them.

ARTICLE 3

The high contracting Powers shall continue to observe the strictest neutrality and shall see to the most scrupulous enforcement of the prohibitions against commerce in contraband on the part of their respective subjects with any one of the Powers now at war or which may hereafter enter into the war, including specifically under the head of contraband those goods which in the aforesaid Articles 10 and 11 of the treaty of commerce, concluded between Russia and Great Britain on June 20, 1766, are considered as such.

ARTICLE 4

If, in spite of the care exercised to this end, Russian or Portuguese merchant ships should be taken or insulted by any vessels of the beligerent Powers, the complaints and representations of the injured Power shall be supported in the most effectual manner by the other. And if, contrary to all expectation, justice should be refused on these complaints, they shall continue to take counsel with each other as to the method that is best calculated to secure indemnification through just reprisals.

ARTICLE 5

If either of the two Powers or both of them should, as a result of or in contempt of the present convention, be disturbed or molested, then they shall make common cause for their mutual defense, and shall work in concert in order to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 6

The present stipulations shall be considered by both Parties as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrality.

ARTICLE 7

The Powers shall communicate in a friendly way their present mutual agreement to all the Powers that are now at war.

ARTICLE 8

The present convention shall be ratified by the two contracting parties, and ratifications thereof shall be exchanged within four months from the day on which it is signed, or sooner if possible.

In faith whereof we, the plenipotentiaries, by virtue of our full powers, have signed and have hereto affixed the seals of our arms.

Done at St. Petersburg, July 13, 1782.

COUNT JOHN D'OSTERMANN [L.S.]

ALEXANDER DE BEZBORODKO [L.S.]

PIERRE DE BACOUNIN [L.S.]

FRANC. JOSEPH D'HORTA MACHADO [S.L.]

**Austrian Netherlands Ordinance concerning Maritime Regulations,
December 12, 1782¹**

Joseph, etc., etc. The protection that we have constantly given to the commerce and navigation of our subjects in the Netherlands requiring that we have accurate knowledge of all the vessels that belong to our said subjects and that sail under the flag of this country, and that no abuse of this flag be tolerated nor of ship's registers pertaining thereto, we have, at the instance of our very dear and well-beloved sister, Maria Christina, Princess Royal of Hungary and Bohemia, Archduchess of Austria, etc., etc., and of our very dear and well-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 297.

beloved brother-in-law and cousin, Albert Casimir, Prince Royal of Poland and Lithuania, Duke of Saxe Teschen, etc., etc., our Lieutenant Governors and Captains General of the Netherlands, etc., ordered and decreed, and hereby order and decree the following articles:

ARTICLE 1

All of our subjects in the Netherlands who own sea-going vessels are required to furnish a declaration, signed by them, within six weeks after publication of the present ordinance, free of carrier's charge, to the Admiralty office at Ostend, Bruges, or Nieuport, respectively, according to the city where the vessels in question procured their ship's registers, and in the case of vessels whose registers were obtained in other cities of this country, the declaration shall be made to the office at Ostend. These declarations must contain (1) the name of the vessel, (2) its character and capacity in nautical tons, (3) whether it was built in this country or in a foreign country, and in the latter case indicate, so far as possible, in what country it was built, where it was purchased, and furnish evidence of the purchase and present ownership of the vessel, (4) the name of the captain commanding it, (5) in what port or waters its owners know or presume it to be now, (6) the date and place where the ship's register was procured with which the vessel is furnished; all this under penalty of a fine of 200 florins for every vessel whose declaration shall not have been made within the prescribed time.

ARTICLE 2

With regard to vessels which our subjects shall acquire after the publication of the present ordinance, they shall be required, before these vessels may put to sea, to procure registers in the usual form, which must be certified at one of the Admiralty offices, at Ostend, Bruges, or Nieuport, respectively, under penalty of invalidity. The owners shall at the same time deliver a separate declaration, containing (1) the name of the vessel, (2) its character and tonnage, (3) whether it was built in this country or in a foreign country, indicating, in the latter case, in what country it was built, where it was purchased, producing evidence of the purchase, (4) the name of the captain who is to command the vessel, (5) in what port it is at present; and the certificate shall state that the present article has been complied with, all under the same penalty decreed in the preceding article.

ARTICLE 3

The owners of vessels who shall sell or transfer, or have other persons sell or transfer, vessels belonging to them, must, within fifteen days at the outside, give a declaration thereof to one of the offices of the Admiralty, at Ostend, Bruges, or Nieuport, respectively, according to the city where the ship's registers may have been delivered, and to the Admiralty office at Ostend, if the registers were furnished in any other city of this country. They must return to the Admiralty office the registers and other papers that they shall receive from the magistrates for the vessels sold or transferred; which return must be made at the same time as the declaration, if the sale or transfer is made in the ports or places of this country, and within one month, or other period to be determined by the Admiralty officials, if the sale is made in foreign ports, under penalty of confiscation of the value of the vessels and 4,000 florins fine, one-third of the amount confiscated and of the fine to go to the informer.

ARTICLE 4

Those who shall be convicted of having lent their name to conceal or disguise foreign ownership of a vessel, in whole or in part, by obtaining registry in this country, or those who shall have yielded, lent, or allowed the use of their registers for other vessels than that for which the register was originally furnished, those who shall have altered or changed in any manner whatsoever their registers, those who, navigating under the flag of this country, shall at the same time be supplied with and make use of a foreign register, or who shall make use of foreign passes, passports, or other papers for their vessel, shall for each offense be liable to a fine of 6,000 florins, as well as every one of our subjects who shall have cooperated or participated therein; and one-third of this fine shall be paid to the informer. Cases of this character previous to the publication of this ordinance shall remain subject to the usual penalties.

We decree, etc.

Given in our city of Brussels the 12th day of the month of December in the year of Grace 1782, the 12th of our reign in the Roman Empire, and the 3rd of our reign in Hungary and Bohemia.

By the Emperor and King in Council.

Act of February 21, 1783, by which His Majesty the King of the Two Sicilies accedes to the System of Armed Neutrality¹

Her Imperial Majesty of all the Russias, inspired by a generous desire to consolidate the true principles of the right of neutrals on the sea, calculated to maintain the freedom of their navigation and maritime commerce, as set forth in her declaration of February 28, 1780, transmitted to the Powers then at war, has observed with the greatest satisfaction how widely the successive adhesion of different Powers to the same principles has extended their effect. For this reason and because of her just confidence in the friendship of His Sicilian Majesty, she has determined to invite him likewise to strengthen by his co-operation in a work of so great importance; and His said Majesty, recognizing this action to be a mark of friendship as well as a feeling of just confidence in him, in the belief that the said principles are entirely in accord with those which he, like his August Father, has constantly followed, ever since the restoration by him of the independent existence of the Monarchy of his Kingdoms, and such as they are clearly recognized in his treaties with Sweden in the year 1742, with Denmark in 1748, with the States-General of the United Provinces in 1753, the only treaties concluded since the period when the said Kingdoms ceased to belong to other sovereignties, has not hesitated to reply with eagerness.

To this end Their Majesties have deemed it wise to conclude a formal act, in which the said principles shall be set forth, and have appointed as their plenipotentiaries, to wit: Her Imperial Majesty of all the Russias, John Count d'Ostermann, her Vice Chancellor, Privy Councilor, Senator and Chevalier of the Orders of St. Alexander Nevsky, of St. Wladimir of the First Class, and of St. Anne; Alexander de Bezborodko, Major General of her Armies, Member of the College of Foreign Affairs, Colonel Commanding the Kiovia Regiment of Militia of Little Russia, Chevalier of the Order of St. Wladimir of the First Class; Pierre de Bacounin, her Councilor of State, Member of the College of Foreign Affairs, Chevalier of the Order of St. Wladimir of the Second Class and of the Order of St. Anne; and His Majesty the King of the Two Sicilies, Don Muzio Gaëta, Duke of St. Nicholas, his Gentleman of the Chamber and his Minister Plenipotentiary at the Imperial Court of Russia; who, having exchanged their full powers,

¹Translation. French text at Martens, *Recueil de Traités*, vol. 3, p. 267.
Ratifications exchanged at St. Petersburg, July 1, 1783.

found to be in good and due form, have agreed to the following articles:

ARTICLE 1

Her Majesty the Empress of all the Russias and His Majesty the King of the Two Sicilies, convinced of the solidity and of the incontestable self-evidence of the principles set forth in the aforesaid declaration of February 28, 1780, which may be reduced in substance to the five following points:

(1) That neutral vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects and merchandise belonging to the subjects of the Powers at war shall be free on board neutral vessels, with the exception of contraband of war.

(3) That nothing shall be considered as such except the merchandise enumerated in Articles 10 and 11 of the treaty of commerce and navigation concluded between Russia and Great Britain on June 20, 1766.

(4) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed a proportionate number of vessels sufficiently near to make access thereto clearly dangerous.

(5) Finally, that these principles, which shall serve as the rule in proceedings and judgments as to the legality of prizes, shall not impair the force of treaties now existing between Their Majesties and other Powers, but they shall give them additional force.

Their said Majesties declare that, not only do they fully adhere to the same principles, but that on all occasions they will cooperate effectually to maintain them in their full force and effect, and will see to their most scrupulous execution.

ARTICLE 2

In any war in which the high contracting Parties, observing absolute neutrality, shall not take part, they shall see to the strictest enforcement of the prohibition of commerce in contraband on the part of their respective subjects with any one whatsoever of the Powers now at war, or which may hereafter enter into the war.

ARTICLE 3

Contraband of war, in which commerce neutrals are forbidden to engage, shall be understood in accordance with the terms of the treaties existing between Russia and Great Britain concluded in 1766, as well as in accordance with the terms of the treaties in force between the Two Sicilies and Denmark, Sweden, and Holland.

ARTICLE 4

If, in spite of all their care to this end, merchant vessels of either of the two Powers, should be taken or insulted by any vessels of the belligerent Powers, the complaints of the injured Power shall be supported in the most effectual manner by the other; and if justice should be refused on these complaints, they shall continue to take counsel with each other as to the method best calculated to secure for their subjects full indemnification.

ARTICLE 5

If either of the two Powers or both of them, because of or in contempt of the present agreement, should be disturbed, molested, or attacked, they shall then make common cause for their mutual defense, and shall work in concert so as to secure full and complete satisfaction, both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 6

These stipulations shall be considered by both Parties as permanent and as constituting the rule whenever there is occasion to pass upon the rights of neutrals.

ARTICLE 7

The two Powers shall communicate in a friendly way their present mutual agreement to all the European Powers in general.

ARTICLE 8

The present act shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged within four months from the date of the signing thereof, or sooner if possible.

In faith whereof, we, the plenipotentiaries, by virtue of our full powers, have signed and affixed hereto the seals of our arms.

Done at St. Petersburg, February 10, 1783.¹

[L.S.] COUNT JOHN D'OSTERMANN

[L.S.] ALEXANDER DE BEZBORODKO

[L.S.] PIERRE DE BACOUNIN

[L.S.] MUZIO GAËTA DUKE OF ST. NICHOLAS

Letter from Mr. Merry, British Chargé d'Affaires at the Court of Denmark to Count Bernstorff, Danish Secretary of State for Foreign Affairs, regarding the Right of Visitation at Sea²

COPENHAGEN, *April 10, 1800.*

The importance which the British Government must necessarily attach to the event which took place in the month of December last in the vicinity of Gibraltar, between some frigates of the King and the frigate of His Danish Majesty named the *Haufeneu*, commanded by Captain Van Dockum, and the orders which have been in consequence sent me by my Court relative to this affair, impose on me the painful duty of repeating to you in writing the complaint on this subject, which I had the honor of representing to you by word of mouth, in the audience which you were so kind as to grant me for that purpose about three days ago. The facts upon which the question turns in this business are in themselves very simple, and I believe such as we are already agreed upon; that is to say, the English frigates met the Danish frigate upon the high sea escorting a convoy. The English commander, judging it proper to avail himself of the right of visiting this convoy, sent on board the Danish frigate to demand from the captain his destination. The latter having answered that he was then

¹February 21, 1783, new style.

²*Collection of State Papers*, vol. 10, p. 22. In the differences which have arisen between Denmark and England on the subject of the right of visitation by sea, the details of the affair of the first Danish frigate taken by the English in the neighborhood of Gibraltar have never been officially published by the English Government. The above letter, in which these details are contained, is extracted from a French paper.

going to Gibraltar; the other replied, that if he was going to stop at Gibraltar he would not visit his convoy; but in case he should not cast anchor in that port, that the visit would certainly take place. Captain Van Dockum then informed the officer who had come on board, that he would in such case make resistance. Upon this the English captain made the signal to examine the convoy. The boat of the frigate, the *Emerald*, prepared to execute this order; some musketry was fired down from the Danish frigate; and one of the English sailors was thereby severely wounded. This frigate also took possession of a boat of the English frigate, the *Flora*, and did not release it until after the English captain had made Captain Van Dockum understand, that, if he did not surrender it immediately, he should commence hostilities. The Danish frigate then repaired with its convoy to the Bay of Gibraltar. There some discussions took place upon this subject between Lord Keith, admiral and commander of the naval forces of His Britannic Majesty in the Mediterranean, and Captain Van Dockum, whom Lord Keith thought proper to consider as personally responsible, and guilty of the injury done to a subject of his King, thinking it impossible that this captain could be authorized to act in such a manner by the instructions of his Court. To clear up the business, the English admiral sent an officer to Captain Van Dockum, praying that he would show him these instructions, and explain their nature. The latter refused to let the admiral see the instructions, alleging that he was forbid to do so; but he told the officer that they imported that he should not permit visitation of his convoy, and that in firing upon the King's boats he only fulfilled his orders. The captain himself afterwards made a like answer, and upon his word of honor, in conversation with Lord Keith, in presence of the Governor of Gibraltar; but he promised at the same time to surrender himself before a judge, and to give notice of his appearance; and upon this promise he was told he might return on board. Upon his having entered his boat, he sent a letter to the admiral, in which he refused to give the notice required. These discussions were terminated by a declaration which Lord Keith made to Captain Van Dockum, that, "if he neglected to submit, and should thereby attempt to withdraw himself from justice, the affair should be represented to his Court."

This, Count, is the statement of the facts which have occasioned the complaint which I am charged to lay before the Danish Government. I flatter myself that you will find it accurate, and conformable

to the correspondence between Lord Keith and Captain Van Dockum, in your possession, as you have done me the honor to inform me.

The right of visiting and examining merchant vessels on the high sea, of whatever nation they may be and whatever their cargoes or destinations, the British Government regards as the incontestable right of every belligerent nation; a right founded upon the law of nations, and which has been generally admitted and acknowledged. It follows of consequence, that the resistance made to this visitation by the commander of a ship of war belonging to a friendly Power, must necessarily be considered an act of hostility, such as he is persuaded could not be enjoined by the commanders of ships of war of His Danish Majesty by their instructions. His Britannic Majesty has therefore no doubt of the displeasure which His Danish Majesty will feel on learning this violent and indefensible procedure of an officer in his service; and the King is persuaded of the promptitude with which His Danish Majesty will make to His Majesty the formal disavowal and apology which he has so just a right to expect from him in the present case, with a reparation proportioned to the nature of the offense committed.

I am specially charged, Count, to make of you a demand of this disavowal, apology, and reparation.

The confidence which I have in the acknowledged justice of His Danish Majesty, induces me to hope that this simple and friendly representation will suffice to obtain it with the promptitude which so important a case requires; but I ought not at the same time to conceal from you, that however great and sincere may be the desire of the King my master to maintain and cultivate the closest harmony and friendship with the Court of Denmark, nothing will induce His Majesty to depart from this just demand.

I have the honor to be, etc.,

(Signed) ANT. MERRY

**Reply of Count Bernstorff to Letter of Mr. Merry, regarding the
Right of Visitation at Sea, April 19, 1800¹**

The undersigned, Secretary of State for Foreign Affairs, having laid before the King, his master, the representations which Mr. Merry did him the honor to address to him under date of the 10th instant, with regard to an encounter which took place in the month of December last between a Danish frigate and certain English frigates, has just been authorized to make the following reply thereto.

In the first place, it should be observed that the version of the affair as set forth in Mr. Merry's note is not absolutely in accord with the account given by the commander of the King's frigate; and, although the difference between the reports of this affair bears upon minor points, we can not refrain from calling attention to it, inasmuch as the account on which the British complaints are founded seem to compromise the honor and the good faith of Captain Van Dockum.

According to this account, that officer is alleged to have given his promise to Lord Keith to appear personally before an English court, and to have broken his word from the moment he returned to his vessel, while it is stated in the report of the said Captain that he constantly and positively declared, as became him, "that, being vested with the command of one of the King's war-ships, he could be responsible for his conduct to his sovereign alone."

The reports on both sides agree for the rest on the principal fact. The question involved is "whether the English frigates were in the right in attempting, or the commander of the Danish frigate in preventing visitation of the convoy under the escort of the latter."

Custom and treaties, it is true, have conferred upon the belligerent Powers the right to have their war-ships or privateers visit unconvoyed neutral vessels. But since this right is not a natural but a purely conventional one, its effect can not, without injustice or lawlessness, be arbitrarily extended beyond what has been agreed upon or granted. But none of the independent maritime Powers of Europe has ever, so far as the undersigned is aware, recognized the right to visit neutral vessels under escort of one or more war-ships, and it is evident that they could not do so without degrading their flags and renouncing an essential part of their own rights.

Far from acquiescing in this hitherto unknown pretension, the ma-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 130.

jority of these Powers have, since there has been question of this alleged right, deemed it their duty to set forth the opposite principle in their conventions relating to matters of this nature, as is evidenced by a great number of treaties concluded between the most important Courts of Europe.

This distinction made between convoyed [and unconvoyed] vessels is as just as it is natural, for the former should not be placed in the same category as the latter.

The visiting by privateers^o or war-ships of belligerent Powers of unconvoyed neutral vessels is founded on the right to ascertain the flag to which they belong and to examine their papers. It is merely a question of determining whether they are neutral and whether their papers are in conformity with requirements. The papers of these vessels having been found to be according to rule, no further search may legally be undertaken. Hence it is the authority of the Government in whose name these documents have been drawn up and issued that gives the belligerent Power the necessary assurance.

But the neutral Government, by convoying with its war-ships the commercial vessels of its subjects, gives belligerent Powers a guarantee that is more authoritative and still more positive than is that furnished by the documents with which these vessels are furnished: and it could not, without dishonor to itself, admit any doubts or suspicions on this point, for they would be as injurious to it as they would be unjust on the part of those who should entertain or manifest them.

If the principle should be admitted that the convoy given by a sovereign did not guarantee the vessels of his subjects from search by foreign war-ships or privateers, it would follow that the most formidable squadron would not have the right to save the vessels entrusted to its protection from search by the weakest privateer.

But it can not be reasonably presumed that the English Government, which has always, and for the best of reasons, shown itself to be jealous of the honor of its flag, and which in the naval wars in which it has not taken part has vigorously maintained the rights of neutrality, would, if the case arose, consider itself bound to suffer such an affront; and the King has too great confidence in His Britannic Majesty's equity and integrity to harbor the suspicion that it can be his desire to arrogate to himself a right which, under similar circumstances, he would not recognize as belonging to any other independent Power.

It would seem to be sufficient to apply to the act in question the

necessary deduction from these considerations in order to demonstrate that the commander of the King's frigate, in resisting an act of violence, which he had no reason to expect, only did his duty, and that it was the English frigates which committed an act in violation of the rights of a neutral sovereign friendly to His Britannic Majesty.

The King hesitated to make formal complaint, so long as he looked upon the affair as merely a misunderstanding that could be cleared up by friendly explanations on the part of the commanders of the respective naval forces kept by the two Governments in the Mediterranean; but finding himself, with great regret, disappointed in this hope, he must needs insist upon the reparation which is due him and which the justice and friendship of His Britannic Majesty would seem to assure to him.

(Signed) C. BERNSTORFF

Note from Count Wedel-Jarlsberg, Envoy Extraordinary of His Danish Majesty, to Lord Grenville, British Secretary of State for Foreign Affairs, relative to the Capture of the Frigate "Freya," London, July 29, 1800¹

The undersigned, Envoy Extraordinary of His Danish Majesty, has the honor to bring to the attention of His Royal Majesty the following facts:

On the 25th instant His Danish Majesty's frigate *Freya*, commanded by Captain Krabbe, which was convoying six vessels, was encountered at the entrance to the Channel by six English war-ships under the command of Captain Baker. An officer from one of these ships was sent on board the *Freya*, informed himself of its destination, etc., and returned with the customary information. But shortly after he came back with orders to visit the convoy. Permission to do so was refused him. In the meantime the other frigates approached, and one of them fired a shot at one of the vessels of the convoy, which was answered by a shot from the Danish frigate across the bows of the vessel that

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 133.

began the attack. The English commander's frigate came nearer and repeated his demand, which was refused by the Danish commander, who protested "that the convoy had not on board any article of contraband," and declared "that, in conformity with his instructions, he would not allow any boat to approach the convoy." A boat was sent notwithstanding, and the *Freya* fired a shot to turn it back, but did not hit it. The English commander immediately fired a broadside; but it was not until the sight of two wounded men convinced him that effective hostilities had been begun that he returned the broadside, repelled force with force, and continued the combat with the said flag-ship and three others, until he found himself obliged to yield to the superior strength of his assailants and to lower his flag after having honorably defended and upheld it to the bitter end. The English thereupon took possession of the Danish frigate, held Captain Krabbe prisoner aboard the flag-ship, and brought him with the prize and convoy to the Dunes.

Thus in the midst of constant and secure peace between two friendly and allied nations there has occurred an unheard-of provocation, the enormity of which is sealed with the innocent blood of the subjects of both.

The affair that has just taken place is a direct attack on the independence of Denmark, a violation of the most sacred rights of the sovereign, and an act of aggression so violent that it would give rise to the most serious consequences, if it could be presumed that the instructions of the British Government had authorized such extreme action of a character so incompatible with the friendship existing between the two Courts.

But, in spite of the unfortunate impression created by the facts mentioned, it is a great consolation to the undersigned to feel that the English officers merely overstepped their instructions through over-eager and ill-advised zeal, and that therefore His Britannic Majesty will not hesitate, in accordance with his well-known sentiments, to show his great indignation over the act and to give His Danish Majesty the most complete satisfaction.

It is under that reservation and while waiting for orders from his Court on this subject that the undersigned confines himself now to a ministerial demand for the prompt restitution of the frigate *Freya* and its convoy, and reparation at the expense of the British Government for all damage resulting from the hostilities mentioned.

His Excellency Lord Grenville, to whom the undersigned has the honor to address this note, will certainly share his just resentment of the aforesaid unfortunate incident and his hopes that satisfactory reparation for the offense may be made at once. The undersigned therefore hastens to request most urgently that his Excellency use his good offices to this end, and with the utmost confidence in his Excellency's just and equitable point of view, he has the honor to reiterate the assurance of his consideration and respect.

(Signed) WEDEL-JARLSBERG

**Reply of Lord Grenville to Count Wedel-Jarlsberg, July 30, 1800,
respecting the Capture of the Frigate "Freya"¹**

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, has had the honor to lay before the King the note which he received yesterday from Count Wedel-Jarlsberg, Envoy Extraordinary and Minister Plenipotentiary from the King of Denmark.

It was with the greatest surprise and concern that His Majesty received the first accounts of the transaction to which that note relates. Studiously desiring to maintain always with the Court of Copenhagen those relations of friendship and alliance which had so long subsisted between Great Britain and Denmark, His Majesty has, during the whole course of his reign, given repeated proofs of these dispositions, which he had flattered himself were reciprocally entertained by the Government of His Danish Majesty. And notwithstanding the expressions made use of in Count Wedel's note, His Majesty can not even yet persuade himself that it is really by the orders of the King of Denmark, that this state of harmony and peace has been thus suddenly disturbed, or that a Danish officer can have acted conformably to his instructions, in actually commencing hostilities against this country by a wanton and unprovoked attack upon a British ship of war, bearing His Majesty's flag, and navigating the British seas.

¹*Collection of State Papers*, vol. 10, p. 70.

The impressions which such an event has naturally excited in His Majesty's breast have received additional force from the perusal of a note, in which satisfaction and reparation are claimed as due to the aggressors from those who have sustained this insult and injury.

His Majesty, allowing for the difficulty in which all neutral nations were placed by the unprecedented conduct and peculiar character of his enemy, has on many occasions, during the present war, forborne to assert his rights, and to claim from the Danish Government the impartial discharge of the duties of that neutrality which it professed a disposition to maintain. But the deliberate and open aggression which he has now sustained can not be passed over in a similar manner. The lives of his brave seamen have been sacrificed, the honor of his flag has been insulted, almost in sight of his own coasts; and these proceedings are supported by calling in question those indisputable rights founded on the clearest principles of the law of nations, from which His Majesty never can depart, and the temperate exercise of which is indispensably necessary to the maintenance of the dearest interests of his empire.

The undersigned has, in all his reports to His Majesty, rendered full justice to the personal dispositions which he has uniformly found on the part of Count Wedel, to remove all grounds of misunderstanding between the two countries. He can not, therefore, now forbear to urge him to represent this matter to his Court in its true light, to do away with those false impressions, under which (if at all) a conduct so injurious to His Majesty can have been authorized; and to consult the interests of both countries, but especially those of Denmark, by bearing his testimony to the dispositions with which His Majesty's Government is animated; and by recommending to his Court, with all that earnestness which the importance of the occasion both justifies and requires, that these dispositions may, in so critical a conjuncture, find an adequate return; and that a speedy and satisfactory answer may be given to the demand which His Majesty has directed to be made in his name at Copenhagen, both of reparation for what is past, and of security against the repetition of these outrages.

In order to give the greater weight to His Majesty's representations on this subject, and to afford at the same time the means of such explanations respecting it, as may avert the necessity of those extremities to which His Majesty looks with the greatest reluctance, His Majesty has charged Lord Whitworth with a special mission to the

Court of Denmark, and that minister will immediately sail for his destination.

That Court can not but see in this determination a new proof of the King's desire to conciliate the preservation of peace with the maintenance of the fundamental rights and interests of his empire.

(Signed) GRENVILLE

July 30, 1800.

Reply of Count Wedel-Jarlsberg to Lord Grenville, London, August 2, 1800¹

The undersigned, Envoy Extraordinary of His Danish Majesty, confines himself to acknowledging the ministerial note of Lord Grenville, dated the 30th ultimo, in reply to his of the 29th. He immediately informed his Court thereof, as well as of the mission with which Lord Whitworth is charged to Denmark.

But pending the transfer to Copenhagen of the discussion of the hostilities committed, the undersigned hastens to repeat his urgent demand with regard to the restitution of the frigate *Freya*, in such condition that it can continue its voyage, and with regard to its convoy. Since the British Government, by means of superior forces, succeeded in making it impossible for His Danish Majesty's frigate to protect its convoy from the carrying out of an act that is contested and in dispute, and since both the frigate and its convoy were brought into an English port, where the searching of the vessels was effected without revealing any contraband article in their innocent cargoes, the undersigned is pleased to believe that the British Government will, by its acts, give the Government of Denmark conciliatory assurance that it is far from desiring to aggravate the difference by a continuation of hostile action, and, by restoring the vessels mentioned, show that it treats them differently from those captured from the enemy.

The undersigned begs Lord Grenville to be good enough to support his just demand with his good offices and to consider compliance

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 137.

therewith as paving the way for an explanation that will wipe out the bad impression of the past and ensure the continuance of the harmony which has been a source of such satisfaction and happiness to the sovereigns of the two nations.

(Signed) WEDEL-JARLSBERG

Reply of Count Bernstorff to Lord Whitworth, Copenhagen, August 16, 1800¹

The King learned with as much regret as surprise of the incident which has caused the detention of his frigate, the *Freya*, and of the convoy that was under its protection. His Majesty, however, far from presuming that the attack on the security of a convoy sailing under the protection and safeguard of his flag could have been premeditated, or that so unequal and so unexpected a fight could have been the result of an order emanating from the British Government. He saw in this unfortunate encounter nothing more than the act of an over-zealous commander of an English squadron, who made unwarranted use of his superiority in strength over a foreign vessel which was sailing in waters along the coast of a country between which and Denmark there exists bonds of friendship and alliance and was therefore unprepared for a hostile surprise.

But nothing can equal the astonishment of His Majesty in learning from the note which the undersigned had the honor of receiving from Lord Whitworth that the British Government, in refusing the satisfaction which is manifestly due, retorts with a demand against Denmark, imputing to it without scruple an act of aggression, which is disproved by a simple examination of the facts.

It is indeed a confusion of the clearest conceptions and an inversion of the most natural and least equivocal sense of things and words to hold that lawful resistance, provoked by a gratuitous attack upon the rights and honor of an independent flag, should be considered an act of aggression, and of premeditated aggression.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 141.

Demonstration is superfluous when facts speak for themselves; and Denmark does not fear to appeal in this matter to the judgment of all the impartial Powers of Europe.

If it were possible to suppose that the King had any idea of attacking Great Britain or any hostile intentions against that country, His Majesty would not hesitate openly to disavow it; but no such possibility exists, and the English Government itself, if it weighs the circumstances calmly and without prejudice, could have no suspicion in this regard.

But even supposing that the commander of the Danish frigate had overstepped the limits of his duty and that the English Government was thereby warranted in demanding satisfaction, it still clearly follows from the nature of the case that this demand could not be made until after the frigate and its convoy had been released, Denmark clearly being, until that is done, the injured party, and consequently the only one who has grounds for complaint.

It is this preliminary demand to release without delay the King's frigate and the convoy under its protection, which Lord Whitworth is requested to transmit to his Court and to support with his good offices. He will be good enough to add the assurance that the King will eagerly accept any proposition compatible with the honor of his flag and the dignity of his crown, which tends to maintain harmony between the two Courts, as this always has been and always will be one of the principal objects desired and sought by Denmark.

The King does not deem it necessary to reiterate to His Britannic Majesty protestations of friendship on an occasion which has neither belied it nor placed it in doubt. Nor does His Majesty permit himself to ask for evidence of the friendship of his august ally. He merely appeals to the equity of a virtuous and upright sovereign, who surely does not believe that he will add to the glory of his reign or to the splendor of his power by an act of injustice toward him.

The undersigned, who has long been prepossessed in favor of Lord Whitworth, is pleased to have confidence in his personal sentiments and trusts that he may succeed in winning the confidence of Lord Whitworth.

(Signed) C. BERNSTORFF

Extract from the Reply of Lord Whitworth to Count Bernstorff¹*August 21, 1800.*

The English Minister supports the principles which he had established in his first note, and says, that if the principle be once admitted, that a Danish frigate may legally guarantee from all search six merchant ships, it follows naturally that that same Power, or any other Power whatever, may, by means of the smallest ship of war, extend the same protection to all the commerce of the enemy in all parts of the world; it will only be necessary to find in the whole circle of the universe a single neutral State, however inconsiderable it may be, well disposed enough towards our enemies to lend them its flag, and to cover all their commerce without running the least risk; for when examination can no longer take place, fraud fears no discovery. In the note which the Count de Bernstorff has just transmitted, the undersigned perceives with pain, that, far from wishing to satisfy the just demand of the King his master, the Danish Government still persists in supporting, not only the principle upon which it founds its aggression, but also the right of defending it by means of arms. In this state of things, the undersigned has no other alternative than to perform strictly his duty, by insisting anew on the satisfaction which the King his master requires, and by declaring to M. de Bernstorff, that, in spite of his sincere desire to be the instrument of the reconciliation of the two Courts, he shall be obliged to leave Copenhagen with all the English mission in the space of a week, reckoning from the day of the signing of this note, unless, in the interval, the Danish Government shall adopt counsels more conformable to the interests of the two countries, and, above all, to those of Denmark, with whom His Majesty has constantly desired, and still desires, to live in terms of friendship and alliance. The undersigned, therefore, has the honor to repeat to the Count de Bernstorff, that he is enjoined to quit Copenhagen with the King's mission in a week, unless a satisfactory reply be given before the expiration of that term.

He requests the Count de Bernstorff to accept the assurances of his most distinguished consideration.

¹*Collection of State Papers*, vol. 10, p. 95.

**Reply of Count Bernstorff to Lord Whitworth, Copenhagen,
August 26, 1800¹**

The undersigned, having laid before the King his master the note which Lord Whitworth did him the honor to hand him on the 21st instant, has just been authorized to make the following reply.

His Majesty is extremely surprised to learn that Lord Whitworth attempts to base the continued detention of the frigate *Freya* and of its convoy on the principle that a neutral vessel which resists visitation by one or more armed vessels belonging to a belligerent Power renders itself, merely by this resistance, liable to confiscation. This principle, such as it is, quite generally though not universally recognized, applies only to unconvoyed merchant ships, which, not being considered as armed, can only expect security from the innocence of their voyage, the respect due their flag, and the genuineness of the documents with which they have been furnished by their Governments.

The extension of the application of this principle to resistance by a warship on behalf of vessels under its convoy, would be as arbitrary as it is novel, and absolutely contrary to the very nature of the principle mentioned.

If the British Government considers that it has authorities or proofs in support of its contention, Denmark must ask that it state them more specifically, in order to meet them with the authorities and proofs that have always appeared to the Danish Government to be so decisively in favor of its stand, as to determine its opinion in this regard, without its ever having had to sacrifice its conviction to its individual interests.

As to the general question, concerning the alleged right to visit neutral vessels under convoy, the undersigned must call attention to the contents of the note which he handed to Mr. Merry under date of April 19.

If Lord Whitworth believes that he has destroyed the force of the arguments set forth in that note by his observation that by means of the right guaranteeing from visit merchant ships which are under the escort of a warship, the least powerful neutral State would be able with impunity to cover with its flag illicit commerce, the undersigned begs to remark that a Government which would degrade itself to the point of lending its flag to such an act of fraud would thereby place itself beyond the pale of neutrality and consequently justify the bellig-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 145.

erent Power, to whose prejudice the said fraud had been committed, to take measures which, under ordinary circumstances, would not be permitted.

The State that neglects its duties undoubtedly exposes itself to the risk of losing its rights; but suspicion of base conduct would be as injurious to the Government which did not deserve it as it would be dishonoring to the Government which should advance such suspicion without grounds. Such a situation, however, could not exist between Denmark and Great Britain. The English Government are surely not ignorant of the fact that Danish officers in command of convoys are held personally responsible to see that the cargoes of the vessels belonging to these convoys do not contain articles prohibited by the rules of the law of nations or by treaties existing between Denmark and belligerent Powers; and it is easy to see that it would be incomparably more difficult to elude the vigilance of these officers than the search of those who should attempt to exercise on these vessels a right, which is as odious in principle as it is futile in its effect.

This essential difference between the principles of the two Courts bringing into this discussion special difficulties, there would appear to be a no more fitting way to remove them than to have recourse to the mediation of a third Power; and the King hesitates the less to propose to His Britannic Majesty the mediation of the Emperor of Russia, since that monarch, the friend and ally of both sovereigns, will certainly have nothing more at heart than to bring about their reconciliation and to prevent an unfortunate misunderstanding. The King will entrust his interest with the utmost confidence to this mediation; and His Majesty will eagerly adopt any proposals of His Majesty the Emperor of Russia tending to effect a settlement compatible with the honor of the two Courts.

The undersigned does not doubt that Lord Whitworth will see in this proposal fresh proof of the sincere moderation of the King and of his unalterable desire to keep the friendship of His Britannic Majesty. He begs him to be good enough to transmit it in this sense to his Court. The King would regret the more to see him depart, since His Majesty had regarded his mission as a pledge of the conciliatory intentions of the London Court and was pleased to believe that his personal sentiments would help to expedite a settlement, for which His Majesty has offered and still offers him the greatest facilities.

The undersigned has the honor to beg Lord Whitworth to accept renewed assurances of his most distinguished consideration.

(Signed) C. BERNSTORFF

Reply of Lord Whitworth to Count Bernstorff¹

August 27, 1800.

Lord Whitworth requests the Count de Bernstorff to observe, that if he does not animadvert upon the arguments he has made use of upon this occasion, it is because he thinks he shall render a much more essential service to his Court, as well as to that of Copenhagen, by abstaining from all that might remove them from the object which both ought to have equally at heart. With respect to the mediation which the Count de Bernstorff proposes as the most proper means of doing away the difficulties of this discussion, the undersigned thinks he can reply with certainty, that, in spite of the apparent misunderstanding which may have existed between the two Courts, there is no sovereign in Europe to whom the King would refer himself, with respect to his dearest interests, with more confidence, than the Emperor of Russia; no one is more ready than the undersigned to do justice to the loyalty and zeal of that sovereign for the good cause. But he believes that, in a similar case, it would be useless to recur even to that intervention, however respectable it may be; and that the Court of Denmark, introducing into the discussion the same frankness as the Court of London, and the same desire of preventing speedily all objects of fatal misunderstanding, will find out the means of effecting this object without difficulty.

WHITWORTH

Declaration by which His Majesty the Emperor of Russia invited Sweden, Prussia and Denmark to conclude a Convention for the Reestablishment of the Rights of Neutrality, August 27, 1800²

Europe gave its approval to the measures that were taken by the majority of maritime Powers for the establishment, as a sacred pact, of the principles of a wise and impartial neutrality, when a naval war,

¹*Collection of State Papers*, vol. 10, p. 97.

²Translation. French text at *British and Foreign State Papers*, vol. 1, pt. 1, p. 334.

which had broken out in 1780 between two great Powers, laid upon the other nations the obligation of providing for the security of their subjects' commerce and navigation. Every act that is founded on justice should obtain general assent; and in this case all that was done was to put again into effect the principles of the law of nations. Russia had at that time the inestimable advantage of carrying the reestablishment of these principles to their ultimate goal, and she was, so to speak, the regulator of the different measures which should cause these principles to be respected. Each of the Powers acceded thereto, enjoyed innumerable advantages therefrom, and this arrangement served as a basis for all the treaties of commerce that Russia concluded thereafter. General approval had made of the principles on which it rested a kind of code of the nations; it was at the same time the code of humanity. The common interest of mankind guaranteed its maintenance and execution.

But perhaps there was too little effort to give these principles a new sanction at the time when, a great Power having reached the point of dissolution, nearly all the other nations felt the fatal influence thereof; when the majority of political bonds were broken or took another direction as a result of the war which was not long in breaking out—a war so different from those that had preceded it, and whose events, which were so multifarious and extraordinary, destroyed all former combinations. Attention being absorbed by events of such vital interest, it was impossible to give the necessary care to the maintenance of these salutary stipulations. On the one hand, justice should have led the belligerent Powers to present a method of guarantee; and the neutral Powers, which were confident that this would be done, believed that they had sufficiently ensured freedom of navigation and commerce to cause it to be respected at least by legitimate Governments, when a new incident proved to what extent independence of Crowns can be exposed to danger, unless the principles and maxims were reestablished, which alone can serve, during this war, as the basis for tranquillity and security of neutral Powers.

On July 13/25 last, an English frigate met at the entrance to the Channel a Danish frigate which was conveying to different ports several vessels of its nation. The Danish captain, after his declaration that he had no article of contraband on board, having resisted the visitation of his vessel, was attacked and forced to yield to superior strength. It, as well as its convoy, was taken to English ports.

The first care of His Danish Majesty, the friend and ally of His Majesty the Emperor of all the Russias, was to inform this latter sovereign of this event and to consult him as to how they should regard this self-evident violation of the law of nations and the principles of neutrality which formed the basis of the treaty of commerce between Denmark and Russia.

Although His Imperial Majesty up to the present moment can not but believe that such a violation will be highly disapproved of by His Britannic Majesty, and although His Majesty is pleased to believe that the equity of His Britannic Majesty will induce him not only to refuse to approve this act, but also to give the Court of Denmark satisfaction proportional to the insult, nevertheless His Imperial Majesty, in order to prevent the recurrence of such acts of violence in future, recognizes the necessity of reestablishing the bases of neutrality, under whose protection his subjects, as well as those of neutral Powers, may enjoy the fruits of their industry and all the advantages of neutral nations, without being exposed hereafter to arbitrary measures which none of the belligerent Powers can permit with impunity against them.

As it is clearly to the interest of His Imperial Majesty, both with respect to the navigation of his own subjects and that of the nations nearest to his ports, to protect from such acts of aggression or violence the seas which bathe the shores of Russia, he invites the Powers that have ports in these regions, and particularly Their Majesties the Kings of Prussia, Denmark, and Sweden, to accede, together with His Imperial Majesty, to the measures that he shall propose to them successively to reestablish in all their force the principles of armed neutrality, and thus to ensure the freedom of the seas. His Majesty announces at the same time to these sovereigns, by the present declaration, that he will use all the force that his dignity requires to uphold the honor of his flag and the flags of his allies, to guarantee their subjects from any violation of the rights sanctioned by all peoples, and to secure for them, under the protection of their respective Governments, all the advantages that result from freedom of commerce and navigation.

His Imperial Majesty, likewise animated by sentiments of justice and impartiality, declares that, while he shall establish a rule for the strict observance of the rights of neutrality, he will not impair the force of any one of them, and that the measures which he shall in his

wisdom adopt shall guide the conduct of his commanding officers and subjects, in accordance with the principles of the most rigorous equity, and in such a way that the belligerent Powers themselves will be constrained to recognize the necessity for his provisions and the beneficent purity of his views.

The Minister of His Imperial Majesty addresses, by order of his sovereign, the present declaration to his Excellency Baron de Stedingk, Ambassador Extraordinary of His Majesty the King of Sweden, requesting him to communicate it immediately to his Court.

COUNT DE ROSTOPSHIN

COUNT DE PANIN

His Excellency BARON DE STEDINGK.

Preliminary Convention between Denmark and Great Britain regarding the "Freya" Dispute, August 29, 1800¹

Their Danish and Britannic Majesties, equally animated by a desire to prevent by means of a preliminary friendly agreement the consequences that might result from the difference which has arisen between them as a result of the encounter which took place between the Danish frigate *Freya* and certain English warships, and to restore in full measure the relations of friendship and confidence which have so long united them, have to this end appointed and constituted as their plenipotentiaries: His Danish Majesty, Count Bernstorff, his Chamberlain and Secretary of State for Foreign Affairs; and His Britannic Majesty, Lord Whitworth, Knight of the Bath, who having communicated to each other their respective full powers have agreed upon the following articles:

ARTICLE 1

The question of right, with relation to the visiting of neutral vessels under convoy, shall be deferred to a subsequent discussion.

ARTICLE 2

The Danish frigate *Freya* and the vessels under its convoy shall be immediately released and the said frigate shall receive in the ports of

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 149.

His Britannic Majesty all that it may require for repairs, according to the practice in vogue between friendly and allied Powers.

ARTICLE 3

To prevent the renewal of disputes of the same nature as the result of similar encounters, His Danish Majesty shall suspend the sending of convoys until subsequent explanations on this same subject shall have resulted in a definitive convention.

ARTICLE 4

If, however, encounters of this sort should occur before the instructions intended to prevent them can be put into operation, they shall have no serious consequences, and the settlement thereof shall be considered as being included in the matters covered by the present convention.

ARTICLE 5

This convention shall be ratified within three weeks from the date on which it is signed, or sooner if possible.

In faith whereof, we the undersigned plenipotentiaries of Their Danish and Britannic Majesties, have signed in their names, and by virtue of our full powers, the present convention, and have hereto affixed the seal of our arms.

Done at Copenhagen, August 29, 1800.

[L. S.] (Signed) C. BERNSTORFF

[L. S.] (Signed) WHITWORTH

**Decree of the Emperor of Russia regarding Sequestration of the
Property of Englishmen, August 29, 1800¹**

Pursuant to the orders of his Excellency Chevalier Pepow, Major General commanding at Riga, under date of August 28, the magistrates of this city announce that His Imperial Majesty, having been

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 153.

informed of the acts of violence which the English have committed against Denmark, and having learned that an English squadron has passed the Sound, an event which, by causing this passage to be closed, has seriously affected the entire commerce of the Baltic, has ordered that, as security against the damage that may result therefrom to Russian commerce, the real designs of the English being as yet unknown, all property belonging to Englishmen be sequestered; that the most rigorous measures be taken to prevent this property from being restored to them under any pretext and without the permission of His Imperial Majesty, without, however, confiscating it or molesting the English in their domestic commerce.

Published at the city hall of Riga, August 29, 1800.

Ad mandatum.

(Signed) SCHWAZ
Secretary in Chief

On the Subject of the Capture of Neutral Ships and of the Project of Confederacy supposed to exist in the North against Great Britain, September, 1800¹

It must have occurred to the observation of every man, and not without pain to every well-thinking person, that several of our daily papers, namely, mostly those in the interests of opposition, have exerted themselves, with more than ordinary malignity, to represent the subject before us in the worst colors; and that they have in this instance, as in every other in which they could flatter the enemies of their country, and misrepresent the acts of government, been faithful to that systematic rule of conduct, which their repeated defeats, and

¹*Collection of State Papers*, vol. 11, p. 169. This article was published in the London papers so early as the 12th of September, 1800. It is attributed to the pen of a noble Lord, who has been for many years honored with the representation of His Majesty at the Court of one of the northern Powers engaged in the confederacy. It must be a matter of interest and curiosity to know what were the sentiments at that time of such an able statesman, possessing such an opportunity of information upon the subject; and therefore the editor has not hesitated to give the article, though not avowedly official, a place in this collection.

the disappointment of their sinister hopes, by the vigor of administration, have suggested to their malevolence. But it shall be the object of these lines to undeceive the honest and sober portion of the people, who, unaware of the falsehoods daily propagated in those papers, have suffered themselves to be misled by the contemptible comments which have lately swelled their columns, in relation to the present subject, while I endeavor to show that it is to the rancor and jealousy entertained by some of the northern Courts, that of Denmark in particular, of the commercial prosperity of Great Britain, and not, as the hirelings of opposition would fain have us believe, to the arrogant, unjustifiable pretensions, or haughty deportment, of our own people towards the rest of the world, that we are to look for the source of the prevailing misunderstandings.

The system now apparently manifesting itself in the north is not new: one similar in its tendency disclosed itself towards the latter end of last war; and our differences with Holland, which country advanced the same unjustifiable pretensions, to a free and uninterrupted intercourse with the enemies of Great Britain, which it would appear Denmark now conceives the design of establishing, were brought to a crisis by the discovery of proceedings decidedly hostile on the part of that republic, as may eventually prove to be the case with regard to Denmark, if the Government of that country avows or justifies the late hostile aggression, of which we have so much reason to complain. Indeed, during the whole of the present war, the conduct pursued by the subjects of that nation has been more than equivocal; the most marked partiality for our enemies has distinguished them in multitudes of instances; and it will not be improper for every Englishman to attend to the consequences which he may expect hereafter, if this semi-warfare, under the cloak of neutrality, is to be tolerated, in compliance with the murmurings of disaffection at home, the malicious insinuations of our external enemy, or the thirst of pelf of pretended friends.

It may first be asked, what is the nature of the present war? Each nation engaged in it will inform you, that it is a contest undertaken in defense of its just rights, dearest interests, and independence; and individuals must form their own judgment of its expediency and justice, from such facts and documents as have come to their knowledge respecting its origin and causes. An inquiry into the merits of a question so often and so ably discussed in Parliament, and latterly so

judiciously treated in the incomparable work of Mr. Herbert Marsh, who has immortalized his name, among fair and candid men, by this production, would be foreign to the present purpose: it is sufficient for us to know that war actually exists, that that war is waged, on our part singly, against the united maritime strength of the first naval Powers of Europe, and one of those Powers, in particular, the relentless rival of this country, and the most desperate and inveterate foe which, perhaps, a nation had ever to contend with; one which no sacrifice, short of the most abject concession, will satisfy, if she proves successful in the present conflict.

Does it not follow then of course, does not self-preservation inform us, that our whole object, all our most strenuous endeavors, should be to weaken and deprive that cruel enemy of the power of molesting us, and to employ with effect the means of defense which it has pleased God, in the largeness of his bounty to this nation, to place in our hands?

The ultimate object of a just and necessary war, such as ours is, is security at home, respect abroad; in a word, a safe and honorable peace: to attain it, we must exert our valor, skill, and vigilance, in that line of warfare where they are most conspicuous, and to which it seems nature has peculiarly adapted us, in conformity to the happy allotment made to us by Providence of an insular situation. To our exertions by sea, to our naval strength alone, therefore, are we to look for protection, and the preservation of our liberties and political existence as an independent nation. To our fleets, under the blessing of Providence, are we indebted for the advantages we enjoy; and it surely is no less a duty carefully to watch that our enemies receive no undue aid and assistance from nations denominating themselves friendly, than it is to defend ourselves from those enemies; or otherwise, while with our right arm we are repelling the open united assaults of France, Spain, and Holland, and spending blood and treasure in our cause, we shall have to protect ourselves with our left from the stiletto attacks and secret blows from beneath the neutral cloak of Denmark and Sweden. Indeed there would be a glaring absurdity, and an unpardonable supineness on the part of those who are intrusted with the management of our dearest concerns, if they were tamely to suffer such proceedings; and if the illicit practices of neutrals have been sometimes connived at, as being the isolated acts of certain individuals, unauthorized and unsupported by their superiors, it does not follow

that those practices are uniformly to be tolerated, or to pass unnoticed, especially when they assume the aspect of a hostile disregard of common usage and the law of nations, and appear to be countenanced by those very authorities whose duty it is to check and suppress them.

It may be necessary, for the information of some readers, to state what the practices alluded to may be, and I am happy to be able to do so, not only from personal observation, but upon high and respectable judicial authority. I shall take Denmark as the standard of the most unwarrantable proceedings ever ascribed to a nation in amity with His Majesty, and endeavor to show that the subjects of that crown have, more than any other people known, indulged in unlawful speculation and the eager thirst of gold, at the expense of other States, to the great annoyance especially of Great Britain, and the unspeakable advantages of her numerous enemies.

It may be necessary here to show in what manner the Danes have succeeded in covering the property of the enemy to the extent they have done, as assertions, unsubstantiated by facts, may be met by assertions equally plausible, or equally unsatisfactory to the reader.

It will not be denied that the enemies of England in general, and especially the Dutch, whose ships and property have been blocked up in the harbors of Surinam, and elsewhere in the West Indies and America, by the British cruisers, have called out to other maritime nations to come and assist them to carry home their colonial produce; nor will it be denied, that, as almost all the inland trade of Holland is carried on by commission, so their external navigation is carried on by seamen who are the natives of the northern parts of Europe, whilst their own people are employed in the canals and trackschuyts. The masters of most Dutch ships are Danes, and nothing certainly could be more obvious than the policy of covering Dutch property by fraudulent intervention and false transfers to Danish subjects; and, from the extent and continuance of these practices, it would indeed almost appear, that the payment of duties into the Danish treasury was as irresistible for the Danish Government, as it was found impossible for the Danish merchant to withstand the monopolizing of the trade and navigation of Holland. Thus things have gone to great length; pretended sales, *pro forma*, have been made by Dutch proprietors to Danes, and other neutral subjects, in the ports of Surinam and the Dutch colonies abroad, and at Amsterdam and other ports of Europe.

At these sales the proper parties were not always present themselves,

the equivalent consideration was not paid down, and the transaction was neither before proper magistrates on oath, nor had the true forms of notarial jurisdiction. Crews were actually sent from Copenhagen, Altona, and elsewhere, to Surinam, etc. The Dutch governor himself is absolutely said to have hoisted the Danish flag; and *entremetteurs*, or middlemen, agents, and brokers, charged, in their correspondence and papers, so much for commission for what they called *neutralization*. Royal sea passes were obtained at Copenhagen as for ships belonging to Denmark, and for persons as Danish inhabitants, which ships had never been in the ports of Denmark, and which persons had passed the greatest part of their lives in foreign countries, under foreign protection. The very bills of admeasurement were made only with the curious clause of *ad interim*, viz., to be valid only until such time as they should come to Denmark. It must be further observed, that the purchases made in the colonies of the enemy, particularly by the Danes, were attended by a mode of proceeding as equivocal, as it tended strongly to conceal his property. Persons, in the character of Danes, were sent from Europe to buy up West India produce: for these cargoes bills were drawn for the payment, upon condition of the ship and cargo's safe arrival, and that the person on whom the bills were drawn should have the commission: thus, in case the ship was captured, and never arrived, there was no actual payment fairly out and out, and no loss to the Dane. There was another practice, that of drawing and redrawing; as when the Dane has been drawn upon, and paid the pretended price for the goods, he draws again upon the Dutch merchant, in whom all property begins and ends. How then were such difficulties to be got over in our courts? How was it possible to discover the ultimate? For if the parties had no conscience in falsifying oaths, proofs, and papers, little could be done towards discovering the truth, and checking an intercourse so opposite to every thing that is to be hoped for by this country in a naval war. Besides, even on the supposition of neutrals having a right to buy and sell in the enemies colonies, and of its being only required of them to prove that there was a *bona fide* purchase in open market, out and out, for a fair equivalent actually paid, still so much fraud, of the kind above related, appeared openly in the Court of Admiralty, that the decisions could not be different from what they were; for, notwithstanding the clamors raised by the Danes, every neutral subject must be conscious that, as such a trade must be attended with peculiar suspicions, it was

incumbent on each of them to produce more exact documents; and as their profits were immense on the general scale, so individuals ought the more patiently to have abided the consequences of seizure and investigation. It is scarcely necessary to add, that these doubts and suspicions were increased, in proportion to the facility with which it was known that briefs of burghership, constituting the holder a Danish citizen, and giving him all the privileges and advantages of a Danish subject in matters of trade, were sold in every town in Denmark to the first comer, whether a Cherokee or a Mandingo Negro; and that Englishmen as well as Dutchmen were frequently, under a similar metamorphose, enabled to hold a direct intercourse with all the enemies ports abroad, to display the Danish flag, and exhibit Danish papers; though, in the case of the former, this intercourse was not only unlawful, but even criminal, upon the ground of express law to that effect, in time of war, and upon the principle of no Englishman, or other British subject, having a right, at any time, to claim the protection of a foreign Power in any transaction, whether commercial or other, that is injurious to the interests of his lawful sovereign. Consular certificates, declarations, and interventions, by which the neutral subject sought to protect his vessel from the search of such consular agent's own countrymen at sea, and to legalize his cargo by the seeming acknowledgment of its lawful character by the enemies of Great Britain, was another instrument of deception in the hands of the neutralist, and a new system introduced by the politics of France, contrary to the ancient established laws of nations, which no judge in admiralty causes could ever submit to. But in adducing the multiplied instances of the practices pursued in regard to the West India settlements of our enemies, it is not to be understood that the speculations of the Danes were confined to that quarter of the world only; the east as well as the west, the Mediterranean as well as the ocean, all equally afforded the fairest opportunities for similar abuses; and the great settlement of Batavia, in particular, has been preserved to Holland by the fraudulent intervention of Danish subjects alone, while the whole trade of the Mauritius passed through their hands, under the same fictitious form with that of the Dutch and French West India islands, although the whole capital of Denmark would scarcely have sufficed to bring one of those branches of commerce fairly, out and out, into their own hands. In Europe, the ports of Carthagen, Cadiz, Ferrol, the ports of Toulon, L'Orient, Brest, and Rochefort, received their naval stores from the

hands of neutrals, and the Danish flag is everywhere conspicuous, where the enemies of England stand in need of supplies of this or any other description, whether lawful or unlawful. But it will happen with this flag, at the close of the present war, in increased proportion as it did with the same flag at the end of the last, when, to quote a single example only, out of eighty vessels which sailed the seas in the name of one great mercantile house of Copenhagen, under Danish colors, there was not one but what assumed its native Dutch character at the pacification, and acknowledged its real proprietor by returning to the ports of Holland. The metamorphose of the French, Dutch, and Spaniards, into Danes, will be still more striking at the close of the present war: at the signing of a peace, the scanty flag of Denmark will resume its proper place, and convey a juster idea of its original insignificance than may be now entertained of it by such as are ignorant of these things. But enough has been said to prove the necessity of the strictest watchfulness on our part; and where is the man who conscientiously can justify such proceedings? Where is the Englishman, who has the interest of his country at heart, that would submit his fair and impartial judgment of these matters, and his right of self-preservation, to false notions of justice, to those who would so cruelly impose on his good faith, and who have so bare-facedly trespassed on his borders, and trampled his best fences under foot, while they professed their friendship for him, and declared themselves neuter in the quarrel between him and his enemies? But, above all, where is the Englishman who, though with native humanity and characteristic benevolence he might be disposed to spare the individual who injured him, would tamely submit to the same encroachments, if he discovered a really hostile design in a nation at large, and the intention, openly manifested, of opposing, by acts of violence and force, the lawful exercise of his just prerogative? The late circumstance of a Danish ship of war resisting by arms the usual visit to which neutral merchantmen are liable on the part of every belligerent Power, is one which no existing treaty, no law of nations, no usage ancient or modern, can justify or countenance; it was a direct infraction of the neutrality of Denmark, by one of her own commanders; a most unwarrantable opposition to the lawful exercise of the duty imposed on the British officers, and a wanton violation of a right inherent in every belligerent Power, and naturally arising from a state of war; a right which our great active rival even did not dispute, in a case which

occurred in the East Indies in the course of Lord Cornwallis's memorable war with the late Tippoo Sultaun; a right, in short, in many instances sanctioned and acknowledged by treaty, with provision only against arbitrary and vexatious detention, where papers and other documents appeared unobjectionable. But in regard to warlike stores, more specific arrangements still have been reciprocally agreed on between the States; and, in many cases, which a reference to our public treaties would discover to the reader's satisfaction, each individual article constituting such stores is named and declared contraband by mutual consent, and proper forms of sea passes for their respective subjects formally stipulated. With what conscience, then, can it be pretended, that the escort of a ship of war, of a nation not a party in the contest, should screen the neutral merchantman from the inspection of his papers, or the stricter search of a belligerent Power, whose only hope of a successful issue is on the assurance of the enemy's receiving no undue succor or advantage from nations professing neutrality and friendship? If protection of this kind is lawful in one instance, it must be equally so in a thousand, and the right of visiting must cease. The admission of so preposterous a pretension would shortly put an end to everything; and we had much better accede at once to the principle which French policy would fain prescribe, but which British sagacity contemptuously rejects, of suffering neutral bottoms to constitute neutral property, and thus deliver up commerce and navy, at a stroke, to the mercy of our foes.

There are men, who, unacquainted with Denmark's means of attack and defense, may form such erroneous conjectures on that subject, as the malice of the disaffected would suggest to them; and there are others, who, better acquainted with the relative powers of that country, may stand appalled at the bugbear of the northern confederacy, and their frightened fancy exhibit to their view the fleets of Denmark, Sweden, and Russia, combining their operations at sea with those of a Prussian army by land, and changing the face of the globe. But let us take a more impartial view of things, and we shall soon perceive that such fears are imaginary only, and that people shrink more from the sound, than they would do from the reality of this war, if, indeed, such a war should be in contemplation with those States, which is extremely problematical. It must, in truth, be acknowledged, that there is something very extraordinary in the conduct of the Court more immediately in question; and the circumstance of two ships, belonging

to that State, acting in a manner so exactly corresponding, though in different seas, would seem to corroborate the idea of the existence of a secret understanding between her and other maritime Powers of the north, as it is hardly to be supposed, that, without some such concert, she would have adopted so desperate a measure as to hazard singly a contest with this country; but still this is doubtful, and it may be only an experiment made on the temper of the British Cabinet, which the resolute firmness of this Cabinet will induce that Court to abandon with as much haste, perhaps, as it undertook it. But in order to be prepared for every contingency, let us suppose the existence of this confederacy, and let us review the forces of our new antagonists in hostile array, while we examine the consequences to them and to ourselves, of so unjust a league, so incoherent, so preposterous, so unnatural a state of things.

We see Denmark with thirty-three sail of the line in the harbor of Copenhagen, her only naval arsenal, with two or three others on the stocks, and from twelve to fifteen frigates and other smaller vessels; two, at most, of these ships, carrying upwards of seventy-four guns—some that number, but the greater part only sixty-four. Of the number of ships of the line, eight at least are wholly unfit for service, and if five-and-twenty could be equipped, it is the utmost; but it could never happen that they could all be properly manned at the same time; and if it were possible, it is extremely improbable that the whole fleet would be risked, at once, to the hazard of an action, even with an enemy of inferior force. Ten or twelve ships, therefore, is the utmost number that would ever quit the Baltic; the rest would be reserved to replace, occasionally, such of them as wanted refitting, after service or accidents at sea, and as guard-ships for the protection of their coasts, and the harbors of Norway in particular, where there exists a spirit not altogether friendly to the Government of Denmark, and a brave people, the enthusiastic admirers of the naval valor and prowess of Britain, as well as of her invaluable constitution. The Danish squadron, once at sea, would naturally seek the ports of Holland; it might also hope to evade the vigilance of our fleet, and escape into those ports; but another Duncan would soon appear to paralyze its future operations. The manning of this squadron, however, must first be effected, before it undertakes any sort of operations; and unless the Danish Government has been silently pursuing measures, in order to secure so requisite a preliminary to war, this object would extremely

perplex that Government in the outset. The Danish, as well as Norwegian sailors, fishermen, and other seafaring people, along the coasts of those kingdoms, are all enrolled, and obliged, by law, to serve on board His Danish Majesty's fleet, whenever a proper notice is delivered to them to repair to their allotted stations; and, indeed, by this mode, a respectable squadron, fifteen sail of the line perhaps, might be soon manned, provided the event had been foreseen, and those men could be found unemployed at their respective homes; but this can hardly be supposed to be the case at present:—those men's livelihoods being procured by their industry and various maritime vocations, it rarely happens that a third of their number is to be met with on the spur of the occasion; besides, it is well known, that, as in that country, of late years, every wise and prudent consideration has yielded to the desire of accumulating wealth—the boon held out to the Danish mariners of becoming the carriers of the world, afforded too promising a prospect of general profit, to admit of those permits being withheld from them by the Government, which, by law, it is authorized to grant to such as are desirous of serving abroad, or of absenting themselves on distant voyages. Thus, on an emergency, at this season of the year, it would prove extremely difficult to man five ships of the line, and an equal number of frigates; and if the summer months are lost, the campaign becomes hopeless for a nation, with which the elements, and the ice in particular, are at variance for the remaining portion of the year.

From this view of the naval power of Denmark, it will not be contended, that much is to be apprehended by this country from that quarter; nor will it be thought, upon an inquiry into that of Sweden, that the accession of that country should much alarm us. The diminished fleet of Sweden, reduced, since the last war with Russia, to twenty sail of the line, would unwillingly risk its reputation beyond the Sound; and though a division of four or five ships might join the Danes in the North Sea, the remainder would be satisfied with a summer cruise in the Baltic or Cattegat, and be wanted to protect Gottenburgh, as well as Copenhagen, and the other trading towns. The manning of the Swedish fleet would be attended with still greater difficulties than even that of Denmark; and the expenses of a war, and the present shattered state of the finances of that country, would be more severely felt, and more reluctantly submitted to, than in the former, where public credit is on a better footing, and the treasury

more judiciously administered; yet even there the most serious consequences might be apprehended from any great additional taxes or burdens on a people naturally selfish, and not enjoying the inestimable privilege of assessing themselves.

With respect to Russia, her navy is more respectable than the two former put together; sixty sail of the line, with a proportionable number of smaller ships, are said to compose her marine: but in the present state of uncertainty, which prevails in regard to the real designs of that Court, it would be misplaced to name His Imperial Majesty, the Emperor Paul, otherwise than with profound deference, and just admiration of the noble deeds achieved by his arms, during the time he favored the common cause; and little more shall, accordingly, be said here, on the part that monarch may be supposed to take, in the so much rumored concert of the north, than merely, that a naval war might possibly not be attended with the same brilliant successes which signalized His Imperial Majesty's arms by land, as his ships are neither calculated for very severe service in distant seas, nor his mariners very numerous, or likely to be much disposed to enter with ardor into a war with that ally, of whose irresistible valor and dexterity on his native element, they have had so many opportunities of receiving the most evincing proofs; such proofs, as might make even the brave and hardy Russian pause, ere he entered the lists of his opponents.

Of Prussia, as merely a military Power, little need be said, although that country, notwithstanding, possesses the means of materially injuring our trade, by the power and influence she enjoys over Hamburgh, and other ports in Germany, from which she might entirely exclude us, if she could find any compensation in that measure, for the more essential injury the commerce of Germany in general, and of her own fine province in Silesia, so noted for its linen manufactures, in particular, would experience from being cut off from all exportation by sea.

This hasty sketch of the power and maritime strength of the projected alliance against this country (if, indeed, it be true that the dictates of malevolence, and the basest passions, should have overcome the suggestions of sound policy, which must ever militate against the formation of such an alliance), will suffice to convince us, that the whole northern marine, united with that of the rest of Europe, is insufficient to cope, successfully, with the triumphant fleets of Great Britain; and it may now be well to state what the consequences of such combination might be, as well to our new enemies as ourselves.

The trade of the Baltic, and even to Germany, would be, at once, cut off from this country, and the momentary inconvenience would be severely felt, though it could not be productive of any very serious mischiefs, as such a state of things could not be durable. We should receive no naval supplies from the Baltic; and all stores of that kind would rise to an enormous price in every part of His Majesty's dominions. Government having a title to preemption, would of course provide against the wants of the navy; but commercial navigation would experience considerable distress. On the other hand, the enormous sums of money which are annually remitted to the States of the Baltic, for those articles, would remain at home, or be fully employed in setting hands to work in every other corner of the globe, from whence the same commodities could possibly be procured. We should, indeed, have to send further for them, but we should in the end obtain them; and the Baltic States, perceiving the fatal consequences to themselves of such a diversion of their branches of trade, would not be tempted to pursue the same blind and rugged path of policy to its conclusion—their own eventual ruin.

If those supplies were cut off from us, we should take care that they were equally so from the rest of Europe; and the general stagnation which would follow, would become insupportable to the northern Powers, as the article of naval stores is the only valuable return they have to make for their own supply of many of the necessities and all the luxuries of life from other countries. It is, besides, particularly with this country, that theirs is a gaining trade; with most other nations it is a losing one. They take little from us, in comparison with what we receive from them; and the large returns we are obliged to make them in specie are the life and soul of all their other commerce. Besides, what is it that British industry might not accomplish? Should we tamely sit down under our privations, and thus acknowledge our dependence on those nations for the essential requisites towards maintaining that marine which is the pride and glory, as well as the support of Great Britain; the envy and admiration, as well as the dread of every hostile Power? Certainly not. Why should not the noble fir-woods of Scotland, though inland and of difficult access, be rendered serviceable by British perseverance, and yield masts to ships of English oak, as well as turpentine? And how would Norway brook the loss of those chief sources of her commerce? What would be said in Sweden, if British iron was found sufficient, and if, with

patriotic spirit, all ornamental work in this article was to cease in England, in order to supply our dock-yards and naval arsenals with the requisite quantity? What would be said there, if tar, pitch, etc., were to be imported in greater quantities from America? And would not the dealers in hemp, flax, and coarse linens, in the Prussian and Russian provinces, look confounded, on perceiving that the exigency of the case had driven the bold and enterprising genius of British traders to the search of the same commodities, not only from the well-known sources of industry, in this species of merchandise, in Scotland and Ireland, but from Barbary, America, and Levant, and elsewhere? Can the occasional supplies of wheat, and other grain, we receive from Denmark, tempt us to forego the precious right she has rashly ventured to dispute with us; and would not legislative provision for the extension and improvement of agriculture at home soon render us independent of her for this necessary of life? As for the trifling articles, which her jealousy of our superior workmanship and excellent materials in manufacture allows her to take of us, and of which more is smuggled than lawfully imported by her own people, they are too trifling to deserve mentioning among our losses in trade by war.

With regard to Hamburg, indeed, and the use of the rivers Elbe and Weser, the kings of Prussia and Denmark might, as was before hinted, materially injure us, by depriving us of these only remaining channels of commercial intercourse with Germany and the northern continent of Europe: but all communication with the ocean would likewise be shut to them; and it is not to be believed that the Elector of Saxony, or other pacific States, would silently acquiesce in so violent a measure, and the consequent suspension of all exportation of their superfluities by sea.

The first immediate consequence of our naval operations would be, the total suspension of the Sound duties, into the Danish treasury; and it need only be said that £160,000 sterling are annually received under that head, to show that it is a most important item of revenue to the State, and one which Denmark would as reluctantly part with, as it could little spare, from the civil list, or immediate expenditure of the royal household, to which it is principally appropriated. Scarcely a ship would venture through those straits; and the British cruisers may, in case of war with Denmark, more effectually deprive the Dutch and French of their supplies from the Baltic than they do even at this

moment. We should deprive the Dutch of the inestimable advantage they derive from the use of the canal of Kiel, in Holstein, through which their small craft and coasting vessels, passing from the Baltic into the river Eyder, and so on into the German Ocean, now supply their wants, as well as those of France, without danger of interruption from our ships of war, which, drawing more water, are unable to pursue them through the shoals and narrows to which those people immediately betake themselves; but once at liberty to act hostilely against Denmark, nothing could hinder Great Britain from possessing herself of the island of Heligoland at the entrance of the Elbe, and from thence annoying with light vessels the Dutch coasting trade, as it issued from the Eyder, at the same time that they blocked up the narrow passes at the mouths of the Elbe and Weser, leading to North Holland. Copenhagen and Altona, from their position and military strength; the seaports of Holstein and of Norway, from their little importance to us, might remain unmolested; but Tranquebar, Fredericksnagore, in the East, Saint Croix and Saint Thomas, in the West Indies, would fall an easy prey, and with them all the hopes of Denmark of commercial grandeur and prosperity, to the utter confusion and trepidation of the whole nation, which attaches the utmost consequence to the possession of those settlements.

**Letter of the Spanish Secretary of State to the Swedish Minister
regarding British Violations of the Swedish Flag, September
17, 1800¹**

SIR: The King my master has learned with the greatest indignation, from a report which the Consul of His Swedish Majesty at Barcelona has sent to the Captain General of Catalonia, containing the declaration of Captain Rudhardt, of the Swedish galiot *Hoffnung*, that on the afternoon of September 4, last, two English vessels and a frigate forced the said captain, after having examined his papers and found them to be all right, to take on board English officers and a considerable number of sailors and to permit his vessel at nightfall to be towed

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 157.

by several English boats to the roadstead of Barcelona and under the guns of its batteries.

[That the English, having reduced the said captain and his crew to silence, by pointing a pistol at his breast, took possession of the helm, and at nine o'clock that night, by means of the said vessel and the boats surrounding it, made an attack on two frigates under the Spanish flag, which were at anchor. The latter, having no reason to suspect that this friendly and neutral vessel concealed enemies on board and thus served for an attack of the most treacherous nature, were in a manner surprised and forced to surrender.

For further details and the acts of violence committed by the English on the Swedish vessel, we would refer you to the captain's declaration, which is transmitted herewith.

The King my master can not but consider this incident as affecting the rights and injuring the interests of all the Powers of Europe, including those of England, and above all as a very serious insult to the flag of His Swedish Majesty.

Indeed, it is evident that, in admitting neutral vessels to their roadsteads and ports, the belligerent Powers desire to mitigate the scourge of war and to facilitate the commercial relations between peoples, which their mutual needs demand.

Therefore, whatever tends to render such navigation suspect and dangerous prejudices the rights and interests of all nations alike.

In the present case, the rights and honor of the Swedish flag have been violated in so outrageous a manner that few such examples can be found in the maritime history of Europe.

If the attack were left unpunished, it would tend to embroil two friendly nations, to paralyze their commercial relations, and to cause the nation that tolerated the insult to be considered as a secret auxiliary of the enemy Power, thus forcing Spain to adopt such measures as the interest of its vessels and the safety of its ports might require.

However, the King my master can not but feel that the Swedish captain was not guilty of the slightest connivance with the English, and that all that he did was to yield to their acts of violence and overpowering numbers.

Under this supposition, the King has commanded me to bring to the knowledge of His Swedish Majesty this grave insult to his flag; and having no doubt as to the latter's resentment at so base and lawless a proceeding on the part of certain officers of the British navy, he ex-

pects the Court of Stockholm to request the English Ministry most urgently to see to it that the officers guilty of the act in questions are punished with the utmost severity, and that the two Spanish frigates which were surprised and removed from the roadstead of Barcelona by a ruse contrary to the law of nations and to the rules of war, are immediately restored, together with their cargoes, as having been illegally taken by means of a neutral vessel, which served as an instrument for the assailants.

His Catholic Majesty is the more confident in his belief that the success of this demand is assured, since the English Government itself can not be blind to the fact that its enemies, by following such an example, might likewise make use of neutral ships to infest its roadsteads and to perpetrate in its ports all the damage possible.

But if, contrary to his expectation, the steps taken by His Swedish Majesty at the Court of London to obtain reparation for the insult to its flag, as well as the restitution of the two Spanish frigates, should not meet with the success desired before the end of the year, His Majesty would consider himself obliged, although with the greatest regret, to adopt measures with respect to the Swedish flag which would protect its roadsteads and ports from so dangerous and revolting an outrage as that just committed by the English.

I have the honor to be, etc.

(Signed) CHEVALIER D'URQUIJO

ST. ILDEPHONSO, *September 17, 1800.*

Circular Letter of the Spanish Minister to the Foreign Ambassadors and Ministers at the Court of Madrid, September 17, 1800¹

SIR: I have the honor to hand you a copy of the memorandum which the King my master has ordered me to send to his Minister at Stockholm, to be delivered to His Swedish Majesty's Minister.

The principles therein laid down and the event that has given rise to them are of such a nature as must interest all the commercial nations of Europe, particularly neutral Powers.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 156.

His Majesty is convinced in advance that your Government will regard the matter in the same light and is pleased to believe that it will cooperate in endeavoring to erase, so far as possible, from the annals of this war an act so destructive of the confidence and hospitality enjoyed by neutral and friendly flags.

I take advantage of this occasion to renew the assurances of my consideration and esteem, and am, sir, yours, etc.

(Signed) CHEVALIER D'URQUIJO

ST. ILDEPHONSO, *September 17, 1800.*

Refusal of the Emperor of Russia to receive an Ambassador from the Emperor of Germany, October 15, 1800¹

According to advices received from the Privy Counselor, M. de Kalistchew, it has been made known that the Emperor of Germany intended to send an Extraordinary Embassy to the Court of His Imperial Majesty, to offer excuses for what happened at Ancona; and for this purpose he had named the Prince of Auersperg, a Lieutenant General of the Armies, and Knight of the Golden Fleece, as his Ambassador. It has not, however, pleased His Imperial Majesty either to accept the Embassy or the Ambassador, particularly in the person of the Prince of Auersperg, who during the journey of Her Imperial Highness the Grand Duchess Alexandra Pavlovna, allowed himself to offer her several indignities (*grossieretés*). His Majesty orders that no answer shall be returned to this notification.

Reply of the Swedish Minister to the Spanish Secretary of State, October 22, 1800²

His Swedish Majesty has learned with the greatest displeasure of the act of violence which certain officers of the English navy com-

¹*Annual Register*, 1800, p. 258. Extract from the *Petersburg Gazette* of October 15, 1800.

²Translation. French text at Martens, *Recueil de Traité*s, vol. 7, p. 159.

mitted on a merchant ship of Swedish Pomerania, for the purpose of using it in a hostile undertaking against two frigates in the roadstead of Barcelona. Being in complete accord with His Catholic Majesty in his views upon this new abuse of force and the common danger which such examples may lead to, with respect not only to neutrals but to the belligerents themselves, His Majesty, both because of his friendly relations with the Court of Spain and the neutrality of his flag, will see that the grievance is brought before the Court of London.

In these demands, which involve principally the rights of the flag and subjects of Sweden, His Catholic Majesty will no doubt consider it just for the King to regard himself as the principal party. In pursuing his own interests, as His Majesty understands them, he will certainly not overlook the interests of Spain. Justice requires the restitution of what has been wrongfully taken: His Majesty shall insist upon that, though he can not guarantee the success of his efforts. He will, in due time, communicate confidentially to the Court of Spain the stand that the English Government may take in the matter; but a just confidence on the part of His Catholic Majesty will undoubtedly leave to the judgment of His Swedish Majesty the form and method to be followed in this business, without requiring that it be accomplished at any fixed time or that a report thereof be rendered. Spain, which, like the rest of Europe, is aware of the lengthy negotiations which Sweden has been carrying on at London with regard to the restitution of its vessels, can have no reason to expect speedier justice in a cause where the restitution is to be made to an enemy.

In general His Swedish Majesty does not admit any responsibility on his part for an act, the cause of which does not concern him. After the reports on the affair which the Court of Spain has had made and in view of the circumstances which that Court itself admits as having been determined, that it should attempt to implicate the Government of Sweden and this entire nation was certainly not to be expected.

It would be unfortunate if the wrongdoing of a third party should cause a rupture of the good relations which a number of direct discussions during the present war have been unable to alter. There have been frequent unfortunate occurrences, especially, it would appear, in Spanish ports: a Swedish ship taken in the very port itself—an intervening one—by the English; another vessel pillaged and completely destroyed by the French at Alicante; several others seized by French privateers stationed at the entrance to the port of Malaga, have given

His Swedish Majesty many occasions to suggest and demand in a friendly way, with a view to the security of his commerce, that the Court of Spain see that its territory is respected. His Majesty would have congratulated himself on the outcome of his representations, if he had observed in his favor any indication of the energy which the Government of Spain has recently displayed against him in a matter, in which he himself has nothing but grievances. Nevertheless the apparent uselessness of his demands has not caused His Majesty to depart from the tone of moderation and equity, which becomes the intercourse of two friendly Courts and to which His Majesty still hopes to see the Court of Spain return, after the various unfortunate occurrences in its ports.

The undersigned, Chancellor of the Court, who has the honor to transmit these views to Chevalier Huerta, Envoy Extraordinary of His Catholic Majesty, in reply to his communication of September 17, takes advantage of this occasion, etc.

(Signed) F. VON EHRENHEIM

DROTTNINGHOLM, *October 22, 1800.*

Letter of the Chancellor of Sweden to the Minister of Prussia concerning the British Violations of the Swedish Flag, November, 1800¹

Having informed the King of the interest taken by His Prussian Majesty in the demand of the Court of Spain concerning the abuse of the Swedish flag by the English, the undersigned, Chancellor of the Court, has been charged to express to Mr. de Tarrach the gratitude of His Majesty for the constant solicitude of the Court of Berlin with respect to the interests of neutral flags and His Majesty's entire confidence in that Court's point of view. The King was very much surprised at the way in which the Court of Spain publicly called Sweden to account on this occasion and at the threats which accompanied its communication. After all the vexations to which neutral flags have been exposed during the present war, this is the most oppressive

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 162.

measure which they have had to endure. In this way, placed constantly between offense and reparation, they must soon allow themselves to be drawn into the war or disappear from all the seas where war is being waged.

These truths being of such moment both for Sweden and for the other neutral Powers, His Swedish Majesty could not assume, in general, any responsibility for the abusive use by belligerent Powers of the Swedish of which they may take possession. This principle seems to His Majesty to be so well founded that he flatters himself with the belief that the Court of Berlin will give him all the support which justice and common interests would seem to require. It has been generally recognized up to the present time, amidst the many acts of violence which have been committed on both sides; otherwise the war would have been general. If the Ottoman Porte, Russia, and England had placed such responsibility upon all the flags that they found at Alexandria; if they had demanded Egypt back again from the respective Governments, because merchant ships had been compelled to transport French troops to take it by surprise; if they had put forward demands and conditions in this peremptory form, all commerce and all neutrality would have been destroyed. Therefore His Majesty considered that the act of violence against the Swedish flag at Barcelona could not be treated otherwise than the acts of which he has had occasion to complain previously; and he has reserved the right to take up the wrongs done his subjects or his flag at such time and in such a way as his special situation may permit.

His Majesty must not, however, conceal the fact that in the present case the injury that has been done to a friendly Power causes him the more regret because he considers the English capture as absolutely illegal and greatly desires to succeed, through his representations, in obtaining restitution. His Majesty will certainly leave no stone unturned in his endeavor to bring about an arrangement, on which rests, quite unexpectedly, the continuance of friendly relations between Sweden and Spain; but he can not do at present for the two frigates what he has not hitherto done for his own convoys, nor hold up brighter hopes to Spain than to himself.

The undersigned takes advantage of this opportunity to, etc.

(Signed) VON EHRENHEIM

Extract from the Gazette of the Court of St. Petersburg regarding an Embargo on British Vessels in Ports of the Island of Malta, November 7, 1800¹

We have been informed that the Island of Malta, which up to the present time has been in the hands of the French, has surrendered to English troops. It is not yet known, however, whether the regulation on this subject, dated December 30, 1798, has been complied with; namely, that upon the capture of this island it should be restored to the Order of St. John of Jerusalem, of which the Emperor of all the Russias is Grand Master. Consequently, it has pleased His Imperial Majesty, for the purpose of maintaining his rights, to order that in all the ports of his empire an embargo shall be placed on the English vessels therein, until this convention shall have been fulfilled.

First Note of Lord Carysfort to Count Haugwitz regarding the Occupation of Cuxhaven by Prussian Troops²

BERLIN, *November 16, 1800.*

The instant Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, learned that His Prussian Majesty was preparing to order a detachment of his troops to enter Cuxhaven, and that the reason which the public thought proper to assign for that measure, was the refusal given by the Government of Hamburg, to cause a vessel to be released, which, taken by one of the ships of war of His Britannic Majesty, had been compelled, in order to avoid the dangers of the sea, to enter that port, he thought it his duty to demand an audience of his Excellency Count Haugwitz, Minister of State and of the Cabinet, for the purpose of obtaining information with respect to that affair.

He received from his Excellency the assurance that the intentions of His Prussian Majesty were in no view hostile or contrary to the interests of Great Britain; but that the occupation of Cuxhaven had for its principal object the maintenance of the authority of His Prussian Majesty, in his character of chief and protector of the neutrality

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 155.

²*Collection of State Papers*, vol. 10, p. 198.

of the north of Germany, and that it was conducted with the consent of the city of Hamburg itself.

Lord Carysfort not being exactly acquainted with the circumstances under which the vessel in question found itself, deferred to another occasion, the observations which he might have wished to submit to his Excellency. He has now grounds to believe, that, laden with contraband goods, it was captured by one of His Britannic Majesty's ships as it was entering into the Texel; that is to say, into a port belonging to the enemies of His Majesty; and that it was restored as soon as the officer who had the charge of it could be informed of the orders of his superiors.

With respect to the occupation of the town of Cuxhaven by the Prussian troops, which must have been founded on particular conventions between His Prussian Majesty and the Senate of Hamburg, he does not think himself called upon to take part in that discussion; but he feels himself authorized to claim, in favor of the subjects and vessels of the King his master, all the rights to which they have a just pretension in a neutral port belonging to a republic, whose connections with the States of His Majesty are very ancient, and generally known; no convention made between the city of Hamburg and His Prussian Majesty being capable of invalidating or altering his rights.

In consequence of these considerations he dares hope that His Prussian Majesty may still suspend the occupation of Cuxhaven, until the two Courts shall have the means of entering into mutual explanations, more particularly since such occupation, in the actual circumstances, might give room to ill-disposed minds to attribute to His Prussian Majesty views not less opposite to the sentiments of justice and moderation which govern all his measures, than to the friendship and the good harmony which subsist between him and His Britannic Majesty.

At all events, it will not escape the wisdom and humanity of His Majesty, that the entrance of a numerous corps of troops into a village both poor and with a small extent of territory, would probably augment the misery of the inhabitants; and that the city of Hamburg having always possessed that place, so indispensably necessary to the preservation of the navigation of the Elbe, all which may trouble that possession, derange ancient customs, and influence the pilots there at present to seek a refuge elsewhere, would strike a sensible blow at the commerce of all the countries of the north of Germany, and even at that of the States of His Prussian Majesty.

(Signed) CARYSFORT

Second Note of Lord Carysfort to Count Haugwitz regarding the Occupation of Cuxhaven by Prussian Troops¹

BERLIN, *November 18, 1800.*

The undersigned, Extraordinary Envoy and Minister Plenipotentiary of His Britannic Majesty, thinks himself obliged again to address himself to his Excellency Count Haugwitz, relative to the intention of His Prussian Majesty, in taking military possession of Cuxhaven. When the undersigned had the honor of transmitting to his Excellency the verbal note of the 16th, it was not exactly known "that the Prussian vessel brought into that port had been restored." The fact being now certain, as well as the zeal manifested by the Senate of Hamburg to fulfil the wishes of the King, the surprise and consternation excited from the moment when the orders for marching a detachment of troops were known, would be raised to their utmost height, if it were ascertained, that, notwithstanding the complete satisfaction given to His Prussian Majesty on all the points respecting which he thought proper to complain, he should not appear less attached to his determination of causing Cuxhaven to be occupied by his troops. In fact, it appears at first sight that this occupation would be so calculated to give the most serious alarms to all commercial nations, that, without alluding to the interpretations which calumny might be desirous of giving to the measure, strong hopes are entertained from the justice and moderation of His Prussian Majesty, for that reason only, that he will not come to the resolution of carrying it into effect.

The undersigned would not, however, think he had executed his duty, should he neglect to represent to his Excellency the lively alarms which necessarily result from the uncertainty in which the affair remains. The reiterated assurances which the undersigned has received from his Excellency of the friendship and good wishes of His Prussian Majesty towards the King of Great Britain, do not allow him to believe that any misunderstanding can arise between the two Courts; but he can not avoid thinking that the enemies of humanity and public tranquillity will endeavor to turn to their purposes the alarm which is generally diffused, in order to scatter discord among the Powers, which will all unite and maintain the safety and independence of Europe at large.

(Signed) CARYSFORT

¹*Collection of State Papers*, vol. 11, p. 199.

Order of His Majesty the Emperor of Russia relative to the Embargo on English Vessels, November 18, 1800¹

The crews of two English vessels in the port of Narva having, at the approach of the military force instructed to arrest them, in conformity with the decreed embargo, resisted, fired their pistols, and sunk a Russian vessel, and thereupon having weighed anchor and taken flight, His Imperial Majesty has seen fit to order the burning of a vessel which had remained in that port.

ST. PETERSBURG, *November 21.*

As a result of information received from Palermo, with regard to the part played in the taking of Malta by Italinskoi the present Chamberlain, it has pleased the Emperor to have delivered to the members of the diplomatic corps residing at his Court a note, signed by the Presiding Minister of the Department of Foreign Affairs, Count Rostopsin and by the Vice Chancellor, Count Panin, of the following tenor:

His Majesty the Emperor of all the Russias has received detailed information concerning the surrender of Malta, confirming the report that, in spite of repeated representations, both on the part of his Minister at Palermo and of the Ministry of His Sicilian Majesty, the English commanders have taken possession of Valetta and the Island of Malta in the name of His Majesty the King of Great Britain, and that they have raised their flag there to the exclusion of all others. His Majesty, justly irritated by such a violation of good faith, has therefore resolved not to raise the embargo placed upon English vessels in the ports of Russia until the stipulations of the convention concluded in 1798 have been fully complied with.

Reply of Count Haugwitz to Lord Carysfort, November 20. 1800²

The undersigned, Minister of State and of the Cabinet, is authorized by the orders of the King to completely tranquillize the anxieties

¹From the Court Gazette. Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 155.

²*Collection of State Papers*, vol. 11, p. 200.

and apprehensions which my Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, expressed to him in his two notes of the 16th and 18th of November. The Prussian vessel, the *Triton*, has, it is true, been restored to its owner; but the mode of release was in every respect as irregular as the proceedings which had previously taken place with respect to it; and after an examination of all the circumstances relative to the incident which forms the subject of complaint, there appears throughout the whole a manifest infraction of the principles of the neutrality of the north of Germany. It is this superior consideration, added to the unjust refusal of the magistracy of Hamburg, which dictated to the King the resolution of causing a body of his troops to occupy the port of Cuxhaven, and the bailiwick of Ritzebüttel. This measure was executed the moment it was determined upon, and it is no longer capable of being revoked, the example of what has taken place, imposing on His Majesty the necessity of effectually watching over the maintenance of that neutrality which he has guaranteed to his coestates. The King can not imagine that His Britannic Majesty, after participating, in his character of Elector of Hanover, in the advantages and benefits of this happy neutrality, can conceive the smallest alarm at seeing a Prussian garrison enter into the port which England has fixed on as her point of communication with the north of Germany. Being thus placed under the immediate guarantee of the King, it will be the more effectually put out of the reach of all violation, and the troops of His Majesty will have no other duty to perform than that of causing the laws of good order and equity to be respected. The utmost confidence may be placed in the prudent dispositions of the reigning Duke of Brunswick, who is invested with the command of the line of demarcation.

But, if more particular assurances be requisite upon this subject, the King feels a pleasure in giving them by the present communication to His Britannic Majesty, and in declaring to him, in express and positive terms, that the present order of things will in no respect interrupt the freedom of commerce and navigation in the port of Cuxhaven; nor, above all, the continuation of the correspondence with England. On the contrary, the officer commanding the troops of the King garrisoned in the bailiwick of Ritzebüttel, will make it his duty to give it every possible facility.

On the whole, the proceeding which the King has, from necessity,

been obliged to follow, does not admit of any equivocal interpretation. It has no other object than the maintenance of the system of which he is the author and defender; and this object shall not be exceeded. His views and conduct have procured him the confidence of all Europe, and they never will be found inconsistent; and though it is not to be anticipated that the other Powers will be disposed to misconceive the purity of his views in the present case, yet His Majesty reserves to himself the privilege of explaining himself further and in a suitable manner to those who may be entitled to such explanation.

(Signed) HAUGWITZ

Proclamation of the King of Prussia, November 23, 1800, announcing the Occupation of Ritzebüttel and Cuxhaven¹

By express order of His Prussian Majesty, Frederick William III, my most gracious sovereign, announcement is made that the temporary occupation of the District of Ritzebüttel and Cuxhaven by the troops which I command and which are a detachment of the army of observation under orders to protect the armed neutrality of the north and of Germany, has been caused by the capture of a Prussian ship. The difference arising from this capture has at length been arranged after certain customary explanations and protestations of friendship.

But as the march of the troops, which became necessary as a result of the lack of success of the first explanations, had been ordered and was already partially executed, His Prussian Majesty deemed it advisable to proceed with the execution of the orders and to take possession of Ritzebüttel and Cuxhaven, in order to prevent similar disputes in future, and to make sure, for the greater security and observance of neutrality, of a place so important and so necessary to the States below the line of demarcation.

Such is the only object of the troops under my orders. As their head, my first desire is to preserve public security and tranquillity, particularly with regard to the system of neutrality; and not only will

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 165.

I uphold with all my forces the authority of the magistrates appointed by the city of Hamburg, but I shall also protect the rights of all inhabitants or foreigners who come here in the course of their business, and especially in their commerce and navigation, which shall not be interrupted in the slightest degree, but, on the contrary, better protected and encouraged, without the least alteration in the constitution and practices of the district which I am occupying.

All persons, therefore, who inhabit or happen to be in this district, are enjoined to show toward the troops that I command the same friendly regard and bearing as these troops have toward them, and thereby avert the inevitable fatal consequences, which would result from the opposite attitude.

Explanatory Answer to the Observations on the subject of the Capture of Neutral Ships, December 16, 1800¹

The late misunderstanding between the Danish and British Governments is now happily removed by a convention alike satisfactory to both nations, and that harmony again restored between the two Courts, which for a moment had been interrupted. The scandalous reports that this interruption gave birth to, are now refuted by evident facts; the fantastical notion of great and extensive plans, formed by the northern Powers for diminishing the trade and navigation of Great Britain, has vanished; and we see, in the clearest manner, the fair and honorable conduct of a State, which certain persons have not been ashamed rashly to accuse of assisting a commerce carried on contrary to treaties, by affording the protection of its ships of war to vessels laden with contraband. Of the six ships which were captured under convoy of the *Freya* frigate, the cargoes were most minutely examined; the result, however, was, that not only the smallest particle of contraband commodities could be discovered, but not even the least proba-

¹*Collection of State Papers*, vol. 11, p. 180. This paper was written in answer to the preceding publication issued by a noble Lord. It is of high importance, as it discusses the great question which now interests the public. It has only been circulated in private, but it is supposed to carry with it an authority almost official.

bility of any hostile or illicit interest being mingled in the property; such an event was, doubtless, but little expected by those persons who have been already alluded to; it disappointed their wishes, it baffled their endeavors to disseminate the seed of national hatred and rancor amongst their countrymen, and, if possible, to extend the first dissatisfaction to an irremediable breach of amity, when perhaps the public disasters might afford them the opportunity of gratifying their private animosities or ambition; the reconciliation, on the contrary, which has taken place, will unite still closer two nations, between whom an old and unremitting friendship has subsisted; more especially, if to this public union be superadded a mutual confidence between the subjects of the respective countries; and if those impressions be removed, which such violent accusations frequently repeated, and even under the sanction of important names, must necessarily have left behind.

Amongst the various publications which have appeared in England upon this subject, some observations inserted in the *London Chronicle*, and other papers, and universally understood to have been written by a nobleman, who not only since resided at Copenhagen in a diplomatic character, are remarkable, as well from the implacable tone in which they are delivered, as on account of the magnitude of the charges contained in them. The reasons which might induce that noble Lord to so violent a display of hatred against Denmark, are pretty generally known, or it could not but create surprise in his readers, that such a stream of invectives should flow from the pen of a gentleman who had been lately invested with the high and respectable office of representing his sovereign at the Court of that very nation against which, though still in alliance, his invectives were directed; of a gentleman, whose situation at that Court must necessarily have made him acquainted with the many violations of neutral commerce, of which, either as the natural consequence of the principles adopted by the British Government, or as transgressions of their orders, such frequent and well-founded complaints had been made; lastly, of a gentleman who could not be ignorant of the many regulations which the Danish Government had made to prevent abuses, and which, had they been suffered to pass unnoticed, might indeed have rendered it questionable, how far the neutrality and intentions of Denmark were sincere. It would have been more honorable for his Lordship, more consistent with the public character which he had sustained, to have explained any misunderstandings that had arisen, to have soothed the irritation of men's

minds, and to have spoken the language of peace, at the time when a dangerous spark, fallen amongst the nations of the north, threatened to extend still further that general conflagration in which Europe was involved; his Lordship, however, has thought proper to display a very different way of thinking.

We will now examine accurately the charges contained in the above-mentioned publication. It is not of the actions of individuals of which he is complaining; it is of the general sentiments of a nation, of the intentions of its government: these are the objects of his attack. He accuses the northern Courts, and particularly that of Denmark, of looking with an eye of jealousy and envy at the commercial prosperity of Great Britain; he represents the Danes as a nation at semi-warfare with England, under the mask of neutrality; he warns his countrymen to be on their guard against "stiletto attacks and secret blows from beneath the neutral cloak of Denmark and Sweden"; he then goes on to assert, that "the illicit practices of neutrals assume the aspect of an hostile disregard to common usage and the law of nations, and appear to be countenanced by those very authorities, whose duty it is to check and suppress them"; in fine, he holds out Denmark in particular, "as the standard of the most unwarrantable proceedings ever ascribed to a nation in amity with His Majesty."

It is hard innocently to suffer under the pressure of circumstances, but one may sustain mere losses and be silent; it is afflicting to see one's property suddenly exposed to accidents, which threaten to annihilate at a blow those fruits of our labor which have been slowly and gradually acquired; an open attack rouses one's powers to resistance, and constancy will always find, in struggling for a good cause, means and resources which the assailant never thought of; but the most painful of all trials is to find one's self, when suffering, misrepresented and abused; nor can it be denied that his malice is the most effective, who, working upon the irritated passions, excites suspicion and hatred in the minds of nations which were, till then, united in mutual bonds of friendship and alliance.

It is not the intention of these sheets to renew the memory of an affair which should have rendered the author of the observations more cautious in what he published; much less do we propose to defend the actions of individuals, whose punishment (if they have really given cause for complaint) belongs solely to courts of justice; on the contrary, we shall confine ourselves to what the noble Lord has been

pleased to assert respecting the sentiments and general conduct of the Danish Government, taking, at the same time, the opportunity thoroughly to examine these pretended plans of commercial aggrandizement, which he so roundly accuses our nation of endeavoring to carry into effect.

With respect to the supposed jealousy of Denmark and her government, at the commercial prosperity of Great Britain, it is so totally forgotten, that, even in the course of the present war, by a new regulation of the customs, a variety of foreign articles, the importation of which was till then prohibited, are now permitted to be brought in, and of consequence a new channel of trade opened to other nations. Can it have escaped the reflection of any impartial observer, that such a change of commercial regulations is the very reverse of any plan on the part of Denmark to injure or diminish the trade of her neighbors; or that the English, whose ships are admitted to equal privileges with those of Danish subjects themselves, and whose industry and enterprise are so much greater, must be the principal gainers by this alteration? Upon the question, therefore, of the principles and spirit of the Danish Government, it is but reasonable if we insist upon being tried and adjudged by such measures.

With respect to those abuses of neutrality, which the noble Lord does not hesitate to represent as countenanced and supported by the Danish Government, it can not be denied, that some particular persons have, by their conduct, given cause for a reasonable suspicion of endeavoring, in their connections with foreigners, improperly to convert the laws and treaties of their country to their private advantage. The question however is, whether the Danish Government (whose duty it never can be pretended to be, to put arbitrary bounds to the lawful commercial profits of its subjects) has ever taken any steps towards preventing such abuses as might justly supply occasion for complaint; whether, both before and after the commencement of the present war, laws have not been published, and other measures taken, the grand object of which was to preserve the trade of Denmark within the limits prescribed by treaty, by checking the fraudulent designs of certain unprincipled individuals; and, finally, whether those offenders, whose transgressions have come to the knowledge of the magistrates, have been brought to public justice, and punished as they deserved?

Immediately upon the commencement of maritime operations in the present war, the necessary qualities and duties of those persons who

were desirous, either as ship-owners or masters, to enjoy the advantages which the happy neutrality of Denmark seemed to offer, were most minutely and accurately defined by two royal ordonnances, dated 22d and 23d of February, 1793. According to the rule laid down in these ordonnances, every person who solicited a royal passport must be a Danish citizen, settled within the King's dominions, that is to say, having a fixed abode, the domicile and residence, if married, of his family, and if not, of himself, when not occasionally absent upon business; he must also, if thus qualified as a citizen, be provided with a certificate from the proper magistrates, stating his declaration upon oath before them, either that the ship is solely his property, or, if there be coowners, that every one of them without exception is a Danish subject; together with a clause also upon oath, that the ship is not laden with any articles declared to be contraband by any treaty, nor with goods belonging to any of the belligerent Powers or their subjects. It is not till after the fulfilment of all these conditions, that a passport can be issued, which even then, in order to prevent all possible abuses by a second expedition, is valid only for a single voyage, that is, till the return of the ship to some port in Denmark. It must be further observed, that all those vessels which are intended to sail beyond Cape Finisterre, must be provided with other passports, grantable to none but such as have already been Danish citizens for the space at least of three years. I shall pass over the further obligations binding on ship-owners, as to other needful documents for their vessels; such are the builder's brief, bill of sale, measuring-bill, muster-roll, etc., etc., and proceed to a few necessary explanations on the two subjects of contraband and admission to the rights of burgher or citizen.

Upon the breaking out of the present hostilities, a very considerable number of persons delivered in petitions, praying to be admitted to the privileges of the burghership, some with intent to settle in a country exempted from the horrors of war; others, that, in their respective characters of mariners, or ship-masters, they might again obtain employment in that way of life in which they had been educated, and which could now no longer be had in their native countries: this was more especially the case in His Majesty's German dominions, which being situated nearer to the scene of war, seemed, upon that account, to require more particular attention. The precaution, therefore, which had been taken by the ordonnances of the 22d and 24th of December, 1796, by which it was decreed, that, besides the condi-

tions already detailed, no married man should be admitted to the rights of a burgher, whose family resided in any other place than that in which he was a candidate for the burghership; and that every captain or master of a vessel should find undeniable security to the amount of 200 rix-dollars, which security was not to be released till the expiration of five years; a space of time considered as sufficient to determine whether he entertained a real intention of settling forever within the territories of His Danish Majesty. It was further directed, in order to prevent foreigners from settling in the villages or in the country, where they might easily withdraw themselves from the eyes of the police, that no stranger should be permitted to exercise the profession of a mariner, unless he became a burgher of some commercial town or other place entitled to the same privileges. When these facts and ordonnances are compared with what the noble Lord has been pleased to advance as to the facility of Danish burghership, asserting, "that the privileges of being admitted to the rights of a burgher in each Danish city, is sold to the first comer, without any attention being paid whether the person is a Cherokee Indian, Mandingo negro, English or Dutchman," one can not but be led to suspect that the accusation is founded on something else than mere ignorance of the real situation of affairs.

Nor less extraordinary is the charge which the noble Lord has ventured to make with respect to contraband. "The harbors," says he, "of Carthagena, Cadiz, Ferrol, Toulon, L'Orient, Brest, and Rochefort, have received all their naval stores from the hands of neutrals": and then he goes on to impeach the Danish flag, as taking the principal share in this illicit commerce. It is only the consummate assurance with which this accusation is made by the pen of a man of his rank and office, that can, perhaps, for a moment procure it credit with a few of his countrymen. If, indeed, the Government of Denmark has, upon any point, made use of peculiar precautions to secure itself from blame or suspicion, it has been upon this. Exclusive of the rules laid down in the afore-mentioned royal ordonnances, another decree was promulgated on the 28th of March, 1794, under a supposition that some abuses had taken place; in this the exportation of every species of contraband to a belligerent State is severely prohibited: and in case of the shipment of such articles for neutral ports, the ship-owners are bound to deliver to the proper magistrates certificates of the arrival and unloading of these articles at the respective neutral ports to which

they had been avowedly destined. We will venture to assert, that no commercial nation ever before adopted such strong and effectual means to avoid and secure itself from any reproach of this sort; and we defy, in the face of all Europe, the noble Lord, and all our other open and secret enemies, to produce a single fact to prove, that from this period there has been exported from any Danish port any contraband of war destined to any port of a belligerent. Had his Lordship been acquainted with such an instance, he had the means of preferring his complaints in the name of his nation, with the most positive certainty of obtaining all possible satisfaction. Such an odious insinuation, therefore, whether originating from the noble Lord himself, or from some other person, of whose secret malice he may not have been aware, thrown out too in general expressions, without proof, without instancing a single fact, and at a time when fears and anxieties pervaded every bosom, can not but render the motive to it extremely suspicious.

The ordonnance of July 25, 1798, concerning the merchantmen from Fleckerøe, contained also the strictest regulations that can well be devised for preventing the secret conveyance of military contraband by the Danish merchant ships sailing under convoy: the result has fully demonstrated the efficacy of these measures; and the severity which has been displayed in punishing every offense against these regulations, when publicly denounced and legally proved, must convince every impartial observer, that the Danish Government was seriously resolved not to suffer the violation of its laws. The partners in a mercantile house in Copenhagen, against whom an information was laid at the suit of the King's attorney, for an abuse with respect to royal sea passes, have long since been exiled: another person, a ship-owner, who had sold his name as a cover for vessels belonging to belligerents, was punished with banishment, his name rendered infamous, and his property confiscated; and even at this moment several prosecutions of the same nature are pending before the tribunals. So much by way of reply to the naked assertion of the noble Lord, that any illicit and fraudulent practices of neutralization are favored and supported by those very authorities upon whom it is incumbent to prevent the flag from being abused, and to watch over the lawful course of commerce.

But our author, who is, it seems, fully instructed in the secret springs which actuate the northern Powers, and Denmark in particular, supplies us with some perfectly new, and indeed unexpected illustrations. Great plans, says he, were formed for monopolizing the trade and navi-

gation of the Dutch into Danish hands; for covering the trade to the French and Dutch West India settlements, and converting it to their own profit: the whole traffic of the Mauritius was carried on through Danish hands; the settlement at Batavia was alone, by their means, preserved to the mother country; the hostile design of interrupting the commerce of Britain became prevalent throughout the nation; and the Government found itself as unable to resist the temptation of levying taxes and imposing duties upon this commerce, as the merchants were of monopolizing it.

The strong and obvious reply which everybody acquainted with the subject must make to the accusation, is this, that the Danish Government never has interfered, nor does it now in the smallest degree, with the commerce of its subjects; it acknowledges it to be its duty to promote the prosperity of the country by every proper support on its part; to protect every fair branch of industry; and, as far as may be in its power, to promote every natural and accustomed trade, and secure it from molestation; but as to speculations, it leaves these entirely to the individuals who make it their business to avail themselves of times and circumstances, according to their skill: in such cases it only interferes when compelled to act either as a judge of the actions of its subjects, or as their protector against unjust attacks. With respect to the revenues which the Danish Government derives from the trade carried on by its subjects, it is indeed extraordinary how these can be an object of reproach in the mouth of the subject of a country, which from her own commerce, extended over every ocean, collects the most considerable part of her revenue, and the most efficacious means of greatness. In Denmark these duties are so moderate, that they may be considered as barely furnishing the supply necessary for those various charges of the State, which the conduct of the belligerents, and the precautions requisite for securing trade from absolute destruction, have occasioned; and the Government has always been willing to forego a part the moment it appeared likely to produce misunderstanding or inconvenience; such, for instance, was the revoking the liberty granted of carrying freights from the East Indies to ports in Europe (a privilege then used by only four vessels), as soon as it was apprehended that its further use might give rise to abuses, and cause complaints on the part of the belligerent Powers: such, also, was its putting a stop to the distribution of those passports, which, in a few instances, had been granted to Danish ship-owners in Europe for such

vessels as they had given instructions to purchase in the East Indies.

But to return to the commercial projects pretended by our author to have been formed by Denmark, and to the question of whether there really does exist a plan for monopolizing the French and Dutch East and West India trade: I can not but think such an accusation rather singular from an English statesman, who certainly ought not to have been ignorant that his countrymen, even before his publication came out, had rendered the very idea of such a design impossible, by seizing on the greatest part of the French and Dutch settlements both in the East and West Indies: such a plan too must have been discovered by efforts in some degree at least corresponding with the greatness of the undertaking. If, therefore, the case be otherwise, the noble Lord must forgive us for treating the suggestion as altogether a chimera of his own brain, and the facts which follow will throw some light upon the subject.

According to the best statistical accounts, the French trade in the West Indies before the revolution, employed every year 600 vessels, each, upon an average, of 250 tons: the Dutch trade to Surinam, and the other West India settlements, required every year about 107 vessels. The Dutch East India Company sent every year to Batavia between 20 and 30 large vessels; and the French trade to the Mauritius, Bourbon, and the coast of Guinea, employed about 180 vessels.

It might be foreseen that a part of this trade, during a war between the great maritime Powers, would fall into neutral hands; and a nation, which owes its flourishing condition to the extent of its trade, can not take it amiss that the merchants of other countries also know how to make use of conjunctures: but what proportion do our commercial undertakings bear with respect to the plans supposed to be formed by us?

For the Danish trade to the West Indies, only the following passports have been distributed throughout all the Danish dominions:

In the year 1797, to vessels bound for St. Croix, 23; for St. Thomas, 21; for St. Croix and St. Thomas together, 25; for the West Indies, without mentioning any place in particular, 5; for foreign settlements in the West Indies, 12.

In the year 1798, for St. Croix, 26; for St. Thomas, 22; for St. Croix and St. Thomas together, 18; for the West Indies in general, 1; for foreign settlements in the West Indies, 9.

In the year 1799, for St. Croix, 28; for St. Thomas, 18; for St.

Croix and St. Thomas together, 19; for the West Indies in general, none; for foreign settlements in the West Indies, 10.

Returned from the East Indies, besides those ships that belong to the East India Company, and which only carry on a direct trade to the settlements belonging to Denmark:

In the year 1797, eleven vessels for private account, five of which were from the Danish settlements at Tranquebar, and in Bengal: the other six from the different European settlements at the Cape of Good Hope, and east of it;

In the year 1798, thirteen ships for private account, four of which were sent from the Danish, the rest from other European settlements.

In the year 1799, likewise thirteen ships for private account, four of which also were from the Danish settlements.

If to these be added one single vessel which has unloaded a cargo, chartered in the East Indies upon freight to a port without the Danish dominions, this is a complete list of all the vessels returned from the East Indies for the account of private owners during the above-mentioned years.

The comparison of this list, with the many hundred vessels which were occupied in the French and Dutch East and West India trade, will fully enable the reader to judge of the reality of the plans and operations of commerce, said, by the noble Lord, to be adopted by us, as well as of the amount of our profit, greatly lessened by the frequent captures of many valuable cargoes. If, at the same time, it is considered that a trade to all the different corners of the world occupies the speculations of Danish merchants even in the most profound peace, and has occasioned a proportionable number of regular expeditions, the increase of our commerce in these branches, the direct trade to our own settlements being deducted, will hardly justify any jealous apprehension, or be looked upon as an encroachment upon the commerce of Great Britain.

That the charge of hostile endeavors to diminish the trade of Great Britain is not founded upon real fact, or upon any injuries done to that country, is fully demonstrated by taking a general view of its traffic. The mercantile fleet of Great Britain covers every sea; and in every session of Parliament, the Minister himself congratulates his nation on account of the flourishing state of its commerce, which, during the course of the present war, has arrived to a height beyond any example of preceding times. The value of the import trade of

Great Britain has arisen from 17,804,024*£* to which it amounted in the year 1787, to above 24 millions, which was the amount in the year 1798. The export, which in the year 1787 amounted to 16,870,114*£* was in the year 1798 announced to be 33,655,396*£*. In the year 1792, 284 vessels arrived in the river Thames from the British settlements in the West Indies. In the year 1798, their number was increased to 347. The maritime trade of London has, since the year 1792, according to accounts laid before Parliament, been augmented by 1,000 vessels from foreign ports, and the trade of the whole country in proportion. After such proofs, it must be plain in what light complaints of encroachments upon British commerce are to be considered.

Denmark has not been so fortunate in the increase of her commerce, and in the undisturbed enjoyment of those advantages, to which her neutrality (a neutrality not maintained without many sacrifices) ought justly to have entitled her. If, indeed, her trade, during the first years of the war, was considerably augmented, those advantages have, however, of late remarkably decreased, and some sources have been entirely lost, partly by occurring circumstances, and partly by the system adopted by Great Britain. The shipping of Denmark has of late evidently diminished. The rigorous measures of the British Government; the extended instructions given to their ships of war and privateers, joined to the frequent and vexatious conduct of the latter in even going beyond these instructions; the assumed authority of the tribunals, and, in particular, the unwarrantable proceedings of the inferior courts of admiralty out of Europe, together with the slow progress of suits in the superior courts of justice: these, and other circumstances, the recital of which would exceed the limits of this answer, have not failed, by their influence, to destroy our trade in the first moments of its prosperity.

By declaring even principal ports to be in a state of blockade, during the last two years, Great Britain has stopped the most considerable channels of Danish commerce, which is not so much founded on mere speculation, as on the export and import of mutual necessities. In cases of blockade, the rights of the blockading Power have received an extension, which is neither founded on common usage, nor on the law of nations. Is it reasonable that a mere declaration should be sufficient to repel all neutral ships from the entire coasts of a country. even when there is not an armed vessel to be seen for the purpose of effecting the blockade? Nay, for a neutral to have left a port blocked

up in this manner, and at which she had arrived before that declaration, has been esteemed a crime to be punished with condemnation. Between the declarations of all the Dutch harbors being in a state of blockade, and the end of August in the present year, 120 Danish vessels have been captured by the English: some of which are condemned, others restored, and several still waiting judgment in the first instance. Besides these, not less than 60 undecided cases are pending in the court of appeals: the dates of some of these are very old, and they are all of importance. It is, moreover, almost grown into a rule, that when the neutral owner, after such a long delay, which is quite contrary to treaty, has at length obtained judgment in his favor, neither the expenses nor interest are to be paid to him. I shall remain silent as to the many injustices committed, as well by privateers as by the tribunals in the West Indies, where cargoes, consisting of Danish produce, in vessels, of which there was not the smallest doubt of their being Danish, and bound for Danish settlements, have been confiscated without the least compunction, and that on the most unreasonable grounds. This may be sufficient to prove, that Denmark, much rather than Great Britain, is entitled to complain of encroachments on her trade, and of commercial jealousy.

What the noble Lord finally has been pleased to say of the political strength of Denmark, lies not within the bounds of this essay. He may, however, rest assured, that Denmark, in the wisdom of her Government and in the patriotism of her subjects, will always find effectual means to defend herself and maintain her rights; and that this brave nation, on whom he endeavors to throw an odium, does not yield in patriotism and fidelity to the Government of any other nation upon earth.

December 16, 1800.

**Convention between Russia and Sweden for the Reestablishment of
an Armed Neutrality, December 16, 1800¹**

In the Name of the Most Holy and Indivisible Trinity:

The freedom of navigation and security of commerce of neutral

¹Translation. French text at Martens, *Recueil de Traité*s, vol. 7, p. 173. Accepted and ratified by His Swedish Majesty on December 20, and by His Imperial Majesty of all the Russias on December 8/20 of the same year.

Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the King of Sweden and His Majesty the Emperor of all the Russias, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the cooperation of the governments interested in their maintenance to make them respected. With this view His Imperial Majesty has manifested, by the declaration of August 15 to the Courts of the North, to whose interest likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Swedish Majesty shares the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the King of Sweden and His Imperial Majesty of all the Russias have appointed as their plenipotentiaries, to wit: His Swedish Majesty, Baron Court of Stedingk, one of the Lords of the Kingdom of Sweden, his Ambassador Extraordinary to His Imperial Majesty of all the Russias, Lieutenant General in his Armies, Chamberlain of the Queen Dowager, Colonel of a Regiment of Infantry, Chevalier Commander of his Orders, Grand Cross Chevalier of his Order of the Sword, and Chevalier of the French Order for Military Merit: and His Imperial Majesty of all the Russias, Count Theodor de Rostopsin, his Privy Councilor, Member of his Council, Principal Minister of the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander Newsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of St. Ferdinand, of St. Maurice and of St. Lazare, of St. Ferdinand and of St. Hubert: who having exchanged their respective full powers have agreed upon the following articles:

ARTICLE 1

His Majesty the King of Sweden and His Majesty the Emperor of all the Russias declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Majesty the King of Sweden and His Imperial Majesty of all the Russias declare that they recognize as such only the following articles, to wit: cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent Parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Majesty the King of Sweden and His Imperial Majesty of all the Russias intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be rendered to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the Royal or Imperial Navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband goods, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers, hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

ARTICLE 4

To protect the commerce of their subjects in common on the basis of the principles hereinbefore laid down, His Majesty the King of

Sweden and His Imperial Majesty of all the Russias, have seen fit to equip separately a number of war-ships and frigates proportional to this object, as the squadrons of each Power will have to take their station and to be used for such convoying as its commerce and its navigation may require, in conformity with the nature and the quality of the trade of each nation.

ARTICLE 5

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

ARTICLE 6

If it should happen, however, that the merchant ships of either of the Powers should be in waters where the war-ships of the same nation are not stationed and where they could not have recourse to their own convoys, then the commanding officer of the war-ships of the other Power must, if requested, give them, sincerely and in good faith, the assistance that they may need, and in such case, the war-ships and frigates of either of the Powers shall act as a support and protection to the merchant ships of the other; it being understood, however, that those asking such aid shall not have engaged in any commerce that is illicit or contrary to the principles of neutrality.

ARTICLE 7

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

ARTICLE 8

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Majesty the King of Sweden or of His Imperial Majesty of all the Russias should be insulted, pillaged, or taken by the war-ships or privateers of either of the Powers at war, then the Minister of the injured party to the government whose war-ships or privateers shall have committed such acts shall make representations, demand the seized merchant ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

ARTICLE 9

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction both for the insult to their flag and for the losses caused to their subjects.

ARTICLE 10

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

ARTICLE 11

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Majesty the King

of Sweden and His Imperial Majesty of all the Russias agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages.

ARTICLE 12

In order that the Powers at war may not allege ignorance of the arrangements concluded between their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

ARTICLE 13

The present convention shall be ratified by the two contracting parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 4/16, 1800.

[L. S.] COURT STEDINGK

[L. S.] COUNT DE ROSTOPSHIN

Convention between Russia and Denmark for the Reestablishment of an Armed Neutrality, December 16, 1800¹

In the Name of the Most Holy and Indivisible Trinity:

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway, led by their love of justice and by an equal solici-

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 182. Accepted and ratified by His Russian Majesty on February 20, 1801.

tude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the co-operation of the governments interested in their maintenance to make them respected. With this view His Imperial Majesty has manifested, by the declaration of August 15 to the Courts of the north, to whose interests likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, of the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Danish Majesty shares the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway have appointed as their plenipotentiaries, to wit: His Imperial Majesty, Count Theodore de Rostopsin, His Privy Councilor, Member of His Council, Principal Minister in the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem, Chevalier of the Orders of St. Andrew, of St. Alexander Nevsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of SS. Maurice and Lazare, of St. Ferdinand and St. Hubert; and His Danish Majesty, Niels de Rosenkrantz, His Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias, his Chamberlain and General Aide-de-Camp; who, after having exchanged their respective full powers, have agreed upon the following articles:

ARTICLE 1

His Majesty the Emperor of all the Russias and His Majesty the King of Denmark and Norway declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway declare that they recognize as such only the following articles, to wit: cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a

blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be given for the insult to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the Imperial or Royal Navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband goods, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

ARTICLE 4

To protect in common the commerce of their subjects on the basis of the principles hereinbefore laid down, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway have seen fit to equip separately a number of war-ships and frigates proportional to this object, as the squadrons of each Power will have to take their station and be used for such convoying as its commerce and its navigation may require, in conformity with the nature and the quality of the trade of each nation.

ARTICLE 5

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do not belong, it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captain and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

ARTICLE 6

If it should happen, however, that the merchant ships of either of the Powers should be in waters where the war-ships of the same nation are not stationed and where they could not have recourse to their own convoys, then the commanding officer of the war-ships of the other Power must, if requested, give them sincerely and in good faith, the assistance that they may need, and in such case, the war-ships and frigates of either of the Powers shall act as a support and protection to the merchant ships of the other; it being understood, however, that those asking such aid shall not have engaged in any commerce that is illicit or contrary to the principles of neutrality.

ARTICLE 7

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

ARTICLE 8

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Imperial Majesty of all the Russias or of His

Majesty the King of Denmark and Norway should be insulted, pillaged, or taken by the war-ships or privateers of any of the Powers at war, then the Minister of the injured party to the government whose war-ships or privateers shall have committed such acts shall make representations, demand the seized ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting Party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Power so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

ARTICLE 9

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction for the insult to their flag and for the losses caused to their subjects.

ARTICLE 10

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

ARTICLE 11

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Imperial Majesty of all the Russias and His Majesty the King of Denmark and Norway agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages hereof.

ARTICLE 12

In order that the Powers at war may not allege ignorance of the arrangements concluded between Their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

ARTICLE 13

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 4/16, 1800.

[L. S.] NIELS DE ROSENKRANTZ

[L. S.] COUNT DE ROSTOPSIN

Convention between Russian and Prussia for the Reestablishment of an Armed Neutrality, December 18, 1800, and Supplementary Article¹

In the Name of the Most Holy and Indivisible Trinity:

The freedom of navigation and security of commerce of neutral Powers having been compromised, and the principles of the law of nations having been disregarded in the present naval war, His Majesty the Emperor of all the Russias and His Majesty the King of Prussia, led by their love of justice and by an equal solicitude for all that may contribute to public prosperity in their States, have deemed it advisable to give a new sanction to the principles of neutrality, which, indestructible in their essence, require only the cooperation of the governments

¹Translation. French text at Martens, *Recueil de Traités*, vol. 7, p. 189. Accepted and ratified by the Russian Emperor, February 6, 1801.

interested in their maintenance to make them respected. With this view, His Imperial Majesty has manifested, by the declaration of August 15 to the Courts of the north, to whose interests likewise it is to adopt uniform measures under similar circumstances, how greatly he has at heart the reestablishment, in all its inviolability, of the right common to all peoples to navigate and to carry on commerce freely and independently of the temporary interests of belligerent parties. His Prussian Majesty shared the desires and sentiments of his august ally, and a happy likeness of interests, strengthening their mutual confidence, has determined them to reestablish the system of armed neutrality, which was followed with such great success during the last American war, by renewing its beneficent maxims in a new convention adapted to present circumstances.

To this end, His Majesty the Emperor of all the Russias and His Majesty the King of Prussia, have appointed as their plenipotentiaries, to wit: His Imperial Majesty, Count Theodor de Rostopsin, his Privy Councilor, Member of his Council, Principal Minister of the College of Foreign Affairs, Postmaster General of the Empire, Grand Chancellor and Grand Cross of the Sovereign Order of St. John of Jerusalem. Chevalier of the Orders of St. Andrew, of St. Alexander Nevsky, and of St. Anne of the First Class, of the Orders of St. Lazare, of the Annunciation, of SS. Maurice and Lazare, of St. Ferdinand and St. Hubert; and His Prussian Majesty, Count Spiridon de Lusi, Lieutenant General of Infantry of his Armies, his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias Chevalier of the Order of the Red Eagle and of the Order of Merit who, having exchanged their full powers, have agreed upon the following articles:

ARTICLE 1

His Majesty the Emperor of all the Russias and His Majesty the King of Prussia declare their desire to see to the strictest enforcement of the prohibition of commerce in contraband on the part of their subjects with any of the Powers whatsoever now at war or that may hereafter enter into the war.

ARTICLE 2

To avoid any ambiguity and any misunderstanding regarding what should be considered contraband, His Imperial Majesty of all the

Russias and His Majesty the King of Prussia declare that they recognize as such only the following articles, to wit: cannons, mortars, **fire** arms, pistols, bombs, grenades, bullets, balls, guns, gun flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, swordbelts, cartridge-boxes, saddles and bridles, except such quantities thereof as may be necessary for the defense of the vessel and of those composing its crew; and all other articles whatsoever not here enumerated shall not be considered war or naval munitions, nor shall they be subject to confiscation, and consequently they shall pass freely and shall not be subjected to the slightest difficulties. It is also agreed that the present article shall in no way impair the special provisions of previous treaties with the belligerent parties, by which articles of a similar nature may have been reserved, prohibited, or permitted.

ARTICLE 3

All that is to be considered contraband having thus been determined and excluded from the commerce of neutral nations, in accordance with the terms of the preceding article, His Imperial Majesty of all the Russias and His Majesty the King of Prussia intend and desire that all other trade shall be and remain absolutely free. In order to safeguard adequately the general principles of the natural law, of which freedom of commerce and navigation, as well as the rights of neutral peoples, is a direct consequence, Their Majesties have resolved to leave them no longer at the mercy of an arbitrary interpretation that may be influenced by isolated and temporary interests. To this end they have agreed:

(1) That all vessels may navigate freely from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the said Powers at war shall be free on board neutral vessels, with the exception of contraband goods.

(3) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have disposed and stationed its vessels sufficiently near to render access thereto clearly dangerous, and that no vessel sailing toward a blockaded port shall be considered as having contravened the present convention, unless, after having been notified by the commanding officer of the blockading fleet of the condition of the port, it shall attempt, either by force or by ruse, to enter therein.

(4) That neutral vessels may not be arrested except for just cause and for self-evident acts; that their cases shall be tried without delay; that the procedure shall always be uniform, prompt, and legal; and that in every instance, in addition to the indemnities granted to those who have suffered loss, without having been at fault, complete satisfaction shall be given for the insult to the flag of Their Majesties.

(5) That the declaration of the commanding officer of the vessel or vessels of the Imperial or Royal Navy, which accompanies the convoy of one or more merchant ships, that his convoy carries no contraband goods, must be considered sufficient, and that thereupon there shall be no occasion to visit either his vessel or those of his convoy.

The better to ensure to these principles the respect due to stipulations dictated by a disinterested desire to maintain the inalienable rights of neutral nations, and to give further proof of their devotion to and love of justice, the high contracting Powers hereby bind themselves most solemnly to issue new and strict orders forbidding their captains, whether of ships of the line or of merchant ships, to load, hold, or conceal on board any articles which, by the terms of the present convention, might be considered contraband, and to see, respectively, to the execution of the orders that they shall have published in their admiralties and wherever else it may be necessary, with a view to which the ordinance, which shall renew this prohibition under the severest penalties, shall be printed at the end of the present act, in order that there may be no allegation of ignorance thereof.

ARTICLE 4

In return for this accession His Majesty the Emperor of all the Russias shall see to it that the commerce and navigation of Prussian subjects enjoys the protection of his fleets, by ordering all the commanding officers of his squadrons to protect and to defend from insult and molestation such Prussian merchant ships as happen to be along their course, as those of a Power that is friendly, allied and strictly observant of neutrality; it being understood, however, that the aforesaid ships shall not be employed in any commerce that is illicit or contrary to the rules of the strictest neutrality.

The same protection and the same assistance shall be given to the Prussian flag by Danish and Swedish war-ships, and His Majesty the Emperor of all the Russias binds himself to cooperate, if neces-

sary, in the arrangements to be stipulated to this effect in separated conventions, to be concluded as a consequence of the present act between the Courts of Berlin, of Copenhagen, and of Stockholm.

ARTICLE 5

This convention shall have no retroactive effect, and consequently no action shall be taken with respect to differences which may have arisen before its conclusion, unless it is a question of continuous acts of violence, tending to establish an oppressive system for all the neutral nations of Europe in general.

ARTICLE 6

If, in spite of the most scrupulous care on the part of the two Powers and in spite of the observance of the most complete neutrality by them, merchant ships of His Imperial Majesty of all the Russias or of His Prussian Majesty should be insulted, pillaged, or taken by the war-ships or privateers of any of the Powers at war, then the Minister of the injured party shall make representations to the government whose war-ships or privateers shall have committed such acts, demand the seized ship, and insist upon suitable indemnification, never losing sight of the reparation due for the insult to the flag. The Minister of the other contracting party shall join with him and support his complaints in the most energetic and effectual manner, and they shall thus act in concert and in perfect accord. If justice should be refused on these complaints, or if the rendering of justice should be postponed from time to time, then Their Majesties shall employ reprisals against the Powers so refusing, and they shall take counsel with each other as to the most effectual method of carrying out such reprisals.

ARTICLE 7

If either of the two Powers or both of them, because of or in contempt of the present convention, should be disturbed, molested, or attacked, it is likewise agreed that they shall make common cause for their mutual defense and shall work and act in concert to secure full and complete satisfaction for the insult to their flag and for the losses caused to their subjects.

ARTICLE 8

The principles and the measures adopted by the present act shall be applicable also to all naval wars, which may unfortunately arise to disturb Europe. These stipulations shall therefore be regarded as permanent and shall constitute the rule for the contracting Powers in the matter of commerce and navigation, whenever there shall be occasion to pass upon the rights of neutral nations.

ARTICLE 9

The principal aim and object of this convention being to ensure general freedom of commerce and navigation, His Imperial Majesty of all the Russias and His Prussian Majesty agree and bind themselves in advance to permit other neutral Powers to accede hereto, and that by adopting the principles they shall share the obligations as well as the advantages hereof.

ARTICLE 10

In order that the Powers at war may not allege ignorance of the arrangements concluded between Their said Majesties, they agree to bring to the knowledge of the belligerent parties the measures which they have together adopted, which are all the less hostile because they are not detrimental to any other country, for they tend solely to protect the commerce and navigation of their respective subjects.

ARTICLE 11

The present convention shall be ratified by the two contracting Parties, and ratifications thereof shall be exchanged in good and due form within six weeks, or sooner if possible, from the day on which it is signed.

In faith whereof, we, the undersigned, by virtue of our full powers, have signed and hereto affixed the seal of our arms.

Done at St. Petersburg, December 6/18, 1800.

[L. S.] COUNT DE ROSTOPSHIN

[L. S.] SPIRIDON COUNT DE LUSI

SUPPLEMENTARY ARTICLE

To prevent the annoyances that may arise as the result of the bad faith of those who make use of the flag of a nation to which they do

not belong; it is agreed to lay down as an inviolable rule that, for a vessel to be considered as the property of the country whose flag it flies, its captains and half of its crew must belong to that country, and it must have on board papers and passports in good and due form; but any vessel that shall not observe this rule and that shall contravene the published ordinances to this effect, printed at the end of the present convention, shall lose all right to the protection of the contracting Powers, and the government to which it belongs shall bear alone the losses, damages, and annoyances that may result therefrom.

Swedish Maritime Regulations, December 23, 1800¹

The preamble states the necessity of rendering the rights of commerce clear and explicit. For this effect, in order to secure the protection of the Government, the commerce of Sweden must observe the following requisites:

1. In order that a ship be entitled to be considered as a Swede, she must be built in Sweden, or the provinces under her dominion; or shipwrecked on the Swedish coast, and there sold; or bought in a foreign country by a legal and authentic contract. If such purchase is made in a country threatened with war, it shall be considered as lawful as soon as three months have elapsed before its actually breaking out. Every ship purchased must be naturalized. As however the naturalization of ships bought in a foreign country, and afterwards taken by a cruiser belonging to any of the belligerent Powers, may frequently produce disagreeable explanations in the sequel, it is hereby declared, that in time of war ships shall not be allowed to be naturalized which have formerly been the property of the belligerents or their subjects; nevertheless, with the exception of all ships that were naturalized before the present regulation was adopted, which shall enjoy all the rights which are connected with the character of neutrals and Swedes.

2. The captain of the ship must be provided with all papers requisite and proper for the security of his voyage. Of this kind are (in

¹*Collection of State Papers*, vol. 11, p. 206.

case the ship goes through the Sound), a certificate of the place where the vessel was built, an invoice, letters showing the cargo not contraband, Turkish and Latin passports, a certificate by the magistrate of the place, a pass for the crew, a copy of the oath of the owner; a charter-party with the subscription of the freighter, the captain, and the person freighting the vessel; a manifest with the like subscriptions, containing a list of the different articles of the lading, and the conditions of the intended voyage; and a bill of health when the same is necessary. If the voyage is merely to the ports of the Baltic or the Sound, the Turkish and Latin passes are not necessary: but the captains must have all the other papers enumerated, without exception.

3. All these documents must be made out and delivered in a Swedish port, unless when a ship has lost her papers by accident, or where they have been forcibly taken away, in which case these documents may be renewed in a foreign port, if the captain, immediately on his arrival, takes the precaution to exhibit an authentic and properly certified declaration, by which the accident is proved, or the ground stated on which he desires the renewal.

4. The captain is prohibited to have false acts or certificates, or duplicates thereof. He is likewise prohibited to make use of a foreign flag.

5. It is required that the captain and half of the crew shall be Swedish subjects.

6. Captains going to the main ocean shall be bound to follow the course pointed out in their instructions, and agreeable to the contents of their certification.

7. Ships destined for the ports of a belligerent Power must, with the utmost care, and under the severest penalties, avoid carrying any contraband commodities. To prevent all doubt or misunderstanding respecting what is contraband, it is agreed that the following goods shall be considered contraband.

8. All Swedish subjects are prohibited to fit out privateers against the belligerents, their subjects and property.

9. A Swedish ship can not be employed by a belligerent Power to transport troops, arms, or any warlike implements. Should any captain be compelled to do so by superior force, he is bound at least to exhibit a formal protest against such violence.

10. When a merchant ship is not under convoy, and happens to be brought to by a ship of war or privateer belonging to any of the bel-

ligerents, the captain shall not, in that case, oppose the searching of his vessel, but be bound faithfully to show all acts and documents which relate to her cargo. The captain and his people are strictly prohibited to keep back or destroy any of their papers.

11. If, however, such ship makes part of a convoy, the foregoing article shall not serve as the rule; but the captain's duty consists in punctually obeying the signals of the commodore of the convoy, for which purpose therefore he shall separate as little as possible from the convoy.

12. All captains are expressly forbidden to attempt going into a blockaded port, as soon as they are formally apprized by the officer commanding the blockade. In order to ascertain what a blockaded harbor is, this appellation is confined to those to which, by the exertions of the blockading Power with ships destined and adequate to the object, it is evidently dangerous to attempt running in.

13. In case a Swedish merchant ship is captured by a ship of war or privateer of any of the belligerents, the captain shall immediately transmit a circumstantial account, and duly explained, to the Swedish consul or vice consul of the place to which the ship is taken; and should there be no consul or vice consul there, he shall transmit a memorial to the Swedish consul of the district to which the place into which his ship is taken belongs.

14. Every captain of a Swedish merchantman, who strictly observes the above regulations and orders, shall enjoy a free voyage, protected by the laws of nations and the provision of treaties; and to this end all public agents and Swedish consuls are required, in case of attack or insult, to give their support to the just and well-founded complaints on the subject. But those who, in any point whatever, neglect or violate their orders, must answer for the consequences of their conduct, without relying upon the protection of His Majesty.

15. By the contents of a recent order, His Majesty has prohibited the privateers of a foreign nation to enter or bring their prizes into the ports of his kingdom, except in case of their being driven in by stress of weather. In this case it is expressly prohibited to all whatsoever to buy the prizes, or any of the effects which the privateers have taken.

To which end publication, etc.

Given at St. Petersburg, 23d December, 1800.

(Signed) GUSTAVUS ADOLPHUS

**Note of Mr Drummond to the Danish Minister for Foreign Affairs
regarding the Armed Neutrality League, December 27, 1800¹**

The Court of London, informed that Denmark is carrying on with activity negotiations very hostile to the interests of the British Empire, thinks that it can not better fulfil the duties which such a circumstance prescribes, than by addressing itself directly to the Minister of His Danish Majesty, to demand from him a frank and satisfactory explanation.

In all the Courts of Europe they speak openly of a confederacy between Denmark and some other Powers, to oppose by force the exercise of those principles of maritime law on which the naval power of the British Empire in a great measure rests, and which in all wars have been followed by the maritime States, and acknowledged by their tribunals.

His Britannic Majesty, relying with confidence upon the loyalty of His Danish Majesty, and upon the faith of the engagements recently contracted between the two Courts, has not demanded from him any explanation on this head. It was his wish to wait for the moment when the Court of Denmark should think it its duty to contradict those reports, so injurious to its good faith, and so little compatible with the maintenance of the good understanding which had been re-established between the two countries.

At present the conduct and the public declaration of one of the Powers, which it is pretended have entered into this confederacy, do not permit His Majesty to preserve any longer towards the rest the same silence which he has hitherto observed.

The undersigned therefore finds himself bound to demand from his Excellency Count de Bernstorff, a plain, open, and satisfactory answer on the nature, object, and extent of the obligations which His Danish Majesty may have contracted, or the negotiations which he is carrying on with respect to a matter which so nearly concerns the dignity of His Britannic Majesty, and the interests of his people.

His Britannic Majesty, always ready to return all the marks of friendship which he may receive on the part of His Danish Majesty, hopes to find, in the answer of the Court of Copenhagen to this request, only a new occasion of manifesting these dispositions.

¹*Collection of State Papers*, vol. 11, p. 210.

In transmitting this note to M. the Secretary of State, the undersigned avails himself, with pleasure, of this opportunity to assure him of the high consideration with which he has the honor to be,

His very humble and obedient servant,

W. DRUMMOND

To his Excellency the COUNT DE BERNSTORFF,

Secretary of State of His Danish Majesty, etc., etc.

Reply of the Spanish Ambassador at the Court of Stockholm to the Swedish High Chancellor respecting the British Violation of the Swedish Flag.¹

STOCKHOLM, *December 29, 1800.*

SIR: I this moment received from my Court an answer to the dispatches, in which I communicated the first steps which I had taken with His Swedish Majesty, when I had the honor to present my first note on the subject of the outrage of which the English were guilty in the road of Barcelona.

The King, my master, has observed with regret the coldness with which the Swedish Court has received the complaint, while it has confined itself to feeble and indecisive measures, from which it does not even indulge the hope of any advantage. This view of the matter shows the small interest with which Sweden is prepared to act in the business. I can not conceal from you, sir, that this inactivity, which is observed in the applications of the Court of Sweden to that of London, might afford room to believe that this negotiation will be connected with other objects of private interest which demand temporizing measures, incompatible with that energy and zeal which His Catholic Majesty expected to see displayed by His Swedish Majesty, in regard to an affair which, as it involves the honor of his flag, would have afforded him an occasion, to prove to Europe the warm part he takes in the interest of the maritime Powers, as well as to testify the value he puts upon the good understanding which hitherto has pre-

¹*Collection of State Papers*, vol. 11, p. 209.

vailed between the two Courts. In pursuance of a new order from my Court, I repeat, and formally insist upon what I demanded in my last note of the 17th October. I fondly flatter myself that His Swedish Majesty will adopt far more active measures than the contents of your note allowed me to hope. It is not probable that you will expose Swedish ships to all the severity of the measures which circumstances require to be exercised against suspected vessels, and whose conduct might be considered as connived at, unless the Swedish Court receives from England the most ample reparation respecting the affair of Barcelona.

I have the honor to be, etc.

(Signed) THE CHEVALIER DE HUERTA

Reply of the Danish Minister for Foreign Affairs to Mr. Drummond, December 31, 1800¹

The undersigned Secretary of State for Foreign Affairs, having given an account to the King his master of the contents of the note which Mr Drummond has done him the honor to transmit to him on the 27th instant, is authorized to return the answer which follows:

The Court of London must have received very incorrect information, to have been able for a moment to presume that Denmark had conceived projects hostile against it, or incompatible with the maintenance of the good understanding which subsists between the two Crowns; and the King is very much obliged to His Britannic Majesty, **for having furnished him with the opportunity of contradicting**, in the most positive manner, reports as ill founded, as contrary to his most decided sentiments.

The negotiation which is carrying on at St. Petersburg, between Russia, Prussia, Sweden, and Denmark, has no other object than the renewal of the engagements which, in the years 1780 and 1781, were contracted by the same Powers for the safety of their navigation, and of which a communication was at that time made to all the Courts of Europe.

¹*Collection of State Papers*, vol. 11, p. 211.

His Majesty the Emperor of Russia, having proposed to the Powers of the north to reestablish these engagements in their original form, Denmark has so much the less hesitated to consent to it, as, far from having ever abandoned the principles professed in 1780, she has thought it her duty to maintain them, and claim them upon all occasions, and not allow herself to admit in respect of them any other modifications than those which result from her treaties with the belligerent Powers.

Very far from wishing to interrupt those Powers in the exercise of rights which the war gives them, Denmark introduces into the negotiation with her allies none but views absolutely defensive, pacific, and incapable of giving offense or provocation to any one. The engagements she will make will be founded upon the strictest fulfilment of the duties of neutrality, and of the obligations which her treaties impose upon her; and if she wishes to shelter her innocent navigation from the manifest abuses and violence which the maritime war produces but too easily, she thinks she pays respect to the belligerent Powers by supposing, that, far from wishing to authorize or tolerate those abuses, they would, on their side, adopt measures best calculated to prevent or repress them.

Denmark has not made a mystery to any one of the object of her negotiation, upon the nature of which some suspicion has been infused into the Court of London; but she has not thought that she departed from the usual forms, in wishing to wait the definitive result of it, in order to communicate an official account of it to the Powers at war.

The undersigned, not knowing that any of the Powers engaged in this negotiation has made a declaration, or adopted measures relative to its object, at which Great Britain might take offense or umbrage, can not without ulterior explanation reply to this point of Mr. Drummond's note.

Much less does he conceive in what respect the engagement taken by the previous convention of the 29th of August last can be considered as contrary to those which Denmark is about to enter into with the neutral and united Powers of the north; and in all cases in which he shall find himself called upon to combat or remove the doubts that shall have been conceived with respect to the good faith of the King, he shall consider his task to be very easy, as long as this good faith shall be introduced into the reproaches or suspicions advanced against His Majesty. He flatters himself that the English Government, after

having received the required explanations, will have the frankness to allow that the provisional and momentary abandonment, not of a principle, the question with respect to which remained undecided, but of a measure, whose right has never been, nor ever can be, contested, can not be found at all in opposition to the general and permanent principles, relative to which the Powers of the north are upon the point of establishing a cooperation, which, so far from being calculated to compromise their neutrality, is destined only to strengthen it.

The undersigned would fain believe that these explanations will appear satisfactory to the Court of London; and that the latter will do justice to the intentions and sentiments of the King, and particularly to His Majesty's invariable desire to maintain and cement, by all means in his power, the friendship and good understanding which subsists between Denmark and Great Britain.

He has the honor to offer to Mr. Drummond the assurance of his most distinguished consideration.

(Signed) BERNSTORFF

COPENHAGEN, *December 31, 1800.*

Reply of Count Wedel-Jarlsberg to Lord Grenville, January 10, 1800¹

The undersigned, Envoy Extraordinary from His Danish Majesty, will transmit this day with regret to his Court the official communication he had the honor to receive yesterday from Lord Grenville, upon the subject of the embargo laid upon the Danish vessels in the British ports.

While he waits until the orders of the King his master, relative to this offensive measure, arrive, we can not avoid protesting against the validity of the motives alleged in the said note, and against the justice of the consequences, which the British Government has conceived it could accredit against the Court of Copenhagen.

A difference which arose between the Courts of Petersburg and London during the negotiation, destined solely to the protection of a

¹Collection of State Papers, vol. 11, p. 220.

perfect neutrality in the north, has no relation whatever with that; and as His Imperial Majesty of all the Russias has caused to be published a formal declaration on the subject of the motives of the measures adopted on his part, Denmark finds in it a complete refutation of the argument advanced by the British Minister.

With respect to the principles of the northern Powers respecting the sacred rights of neutrality, they have not been abandoned. Russia, in her belligerent quality, has only suspended the application, and Denmark and Sweden have, by their convention of the 27th March 1794 (officially communicated to all the belligerent Powers), declared, in the face of all Europe, that their system of protection in favor of innocent commerce was invariable.

Hence it follows that his Danish Majesty only now renews ties which have not ceased to exist. The undersigned thinks himself, in consequence, authorized to protest, formally, against proceedings of so hostile a nature, which the King his master could not but have considered as an open and premeditated provocation, had not the communication been accompanied with the assurance that His Britannic Majesty still desires to maintain good harmony with Denmark; a desire which His Danish Majesty has constantly professed, and of which he has given the most unequivocal proofs.

The undersigned, who for a number of years has felicitated himself upon being the interpreter of the unalterable sentiments of the King his master, is deeply hurt that false impressions have just menaced the good understanding between the two Crowns. He wishes that he could still be the instrument of an explanation calculated to do away injurious doubts, and to prevent incalculable consequences to the interests of the reciprocal powers.

It is with these sentiments, and with those of perfect consideration, that he has the honor to renew to his Excellency Lord Grenville the homage of his respect.

(Signed) WEDEL-JARLSBERG

January 10, 1801.

British Instructions to Lieutenant General Trigge regarding His Majesty's Forces in the Leeward Islands, January 14, 1801¹

SIR: Information having reached this country which leaves no doubt, that the Courts of Copenhagen, Stockholm and Petersburg have agreed to revive the principles of the armed neutrality of the year 1780 and that extensive armaments are now preparing in the ports of the above-mentioned Powers, with the intention of supporting these principles and consequently of resisting by open violence the maritime rights of this country, as established by the law of nations, by the positive stipulations of treaties and by the usage of former wars, His Majesty has resolved to adopt such measures as a conduct so hostile to the just and ancient privileges of the British flag, calls for on his part, for the maintenance and preservation of the best interests of his people; and to employ every possible means, as well to obtain indemnity and reparation for the injury done to the property of His Majesty's subjects, in violation of the most solemn treaties, by the Power which has taken the lead in this confederacy, as to deprive the Courts of Denmark and Sweden (whose conduct has obliged him reluctantly to the resources they may expect to derive from their colonies and trade for entering upon, or carrying on a contest, which as soon as the season will admit of naval operations in the Baltic, it will not be in His Majesty's power to avoid, unless they shall in the interval be induced by this timely act of vigor and justifiable precaution to relinquish the system, to which they are actually engaged, and to give His Majesty such security as the case may appear to require, against the renewal of similar pretensions on their part.

In pursuance of this principle I am commanded to signify to you His Majesty's pleasure that immediately on the receipt of these instructions you are, in concert with the officer commanding His Majesty's naval forces on the Leeward Island station to make every necessary preparation for proceeding in His Majesty's name to seize upon and take possession of the Islands of St. Thomas, St. Croix and St. John and the Swedish island of St. Bartholomeus, together with all ships, stores, or public property of any description, belonging to Russia, Denmark or Sweden, which may be found in the said Islands.

¹Thorvald Boye, *op. cit.*, p. 357.

Additional Instructions to Lieutenant General Trigge, January 14, 1801¹

SIR: In addition to the instructions contained in my letter of this day's date I have to inform you that His Majesty from his anxiety to avoid coming to open war with Denmark and Sweden is still willing to entertain a hope, that the display of the vigorous and decided measures he is compelled to adopt against their trade and colonies may still induce them to relinquish their present engagements with Russia and to give such security as His Majesty may deem necessary for their observance of a system of neutrality consistent with the maritime rights of this country. Under these circumstances and until the effect upon the Courts of Copenhagen and Stockholm of the measures His Majesty has ordered to be taken, can be ascertained, whatever appearance of existing hostility these measures may assume, His Majesty is disposed to consider them rather as steps of just and necessary precaution, and with a view to indemnify his own subjects for the injury they have sustained by the confederacy to which these powers are a party, than as arising out of an actual state of war.

This being the case you are not to consider any property or other articles liable to seizure, and which in such cases have usually fallen to the share of the captors as required to them for their advantage His Majesty reserving to himself to determine hereafter respecting the disposal of such property and to what amount an appropriation may be proper for the reward of the captors, and with this view you will cause all articles and effects coming under this description to be deposited in proper places of safety until His Majesty's pleasure shall be known or to be sent to this country on board the ships in which they may be seized as the nature of the cargo or stores may appear to require.

(P. R. O.)

¹Thorvald Boye, *op. cit.*, p. 358.

British Order of Council laying an Embargo on Russian, Danish, and Swedish Ships, January 14, 1801¹

At the Court of St. James's, the 14th January 1801; present, the King's Most Excellent Majesty in Council.

Whereas, His Majesty has received advice, that a large number of vessels belonging to His Majesty's subjects have been and are detained in the ports of Russia, and that the British sailors navigating the same, have been and now are detained, as prisoners, in different parts of Russia; and also, that, during the continuance of these proceedings, a confederacy of a hostile nature, against the just rights and interest of His Majesty, and his dominions, has been entered into with the Court of St Petersburg by the Courts of Denmark and Sweden, respectively; His Majesty, with the advice of his Privy Council, is thereupon pleased to order, as it is hereby ordered, that no ships or vessels belonging to any of His Majesty's subjects be permitted to enter and clear out for any of the ports of Russia, Denmark, or Sweden, until further order; and His Majesty is further pleased to order, that a general embargo or stop be made for all Russian, Danish, and Swedish ships and vessels whatsoever now within, or which hereafter shall come into any of the ports, harbors, or roads within the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said ships and vessels; but that the utmost care be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no damage or embezzlement whatever be sustained.

And the Right Hon. the Lords Commissioners of His Majesty's Treasury, and the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

W. FAWKENER

Notification of Lord Grenville to the Danish and Swedish Ambassadors regarding an Embargo on Danish and Swedish Ships, January 15, 1801²

The undersigned, principal Secretary of State for Foreign Affairs, has been commanded by His Majesty to make the following communi-

¹*Collection of State Papers*, vol. 11, p. 217.

²*Collection of State Papers*, vol. 11, p. 218.

cation to Count von Wedel-Jarlsberg, and Baron von Ehrensward, Danish and Swedish Envoys at this Court.

His Majesty has heard with the sincerest concern, that at the moment when the Court of Petersburg had adopted the most hostile measures against the persons and property of His Majesty's subjects, the two Courts of Copenhagen and Stockholm had concluded a convention with that Power for the maintenance of a naval armed confederacy in the north of Europe. If the circumstances under which the convention alluded to was negotiated and concluded, could have left any doubt in His Majesty's mind respecting the objects to which it is directed, that doubt would, by the declarations of the Court of Petersburg, and still farther by the recent and official declarations of the Court of Copenhagen, have been completely removed. It is sufficiently known with what hostile intentions an attempt was made, in the year 1780, to introduce a new code of public law against Great Britain, and to support by force a system of innovation prejudicial to the dearest rights of the British Empire. But His Majesty has hitherto had the satisfaction to see that those arbitrary and injurious measures have been completely given up. At the beginning of the present war, the Court of Petersburg, which had taken a most active part in the establishment of the former alliance, entered into articles with His Majesty, which are not merely incompatible with the convention of 1780, but which are directly in the face of it; engagements which are still in force, and the reciprocal execution of which His Majesty is entitled to demand upon every principle of good faith, during the continuance of the war. The conduct of His Majesty towards the other Powers of the Baltic, and all the decisions of his courts of justice in regard to prizes, have been uniformly, and notoriously, founded upon those principles which previously to the year 1780 had guided all other European courts of admiralty. Nor had the intention to renew the former confederacy been communicated to His Majesty on the part of any of the contracting Powers, till he received information of the actual signing of the convention, and had been apprized by the declaration of one of the parties, that the object of it was to confirm the stipulations entered into in the year 1780 and 1781, in their original shape. No further doubts therefore can remain, that the object of their confederacy, and the naval preparations, which the contracting parties pursue with vigor, is nothing less than to place themselves in a situation to maintain by force, pretensions which are

so obviously inconsistent with the principles of justice, that those Powers, which, when neutral, brought them forward, were the first to oppose them when they became belligerent, and the establishment of which, if it should be effected, would be one of the principal means of overthrowing the strength and security of the British Empire. On the knowledge of these circumstances, His Majesty the King would act contrary to the interest of his people, the dignity of his crown, and the honor of his flag (which by the discipline, courage, and skill of his navy, has risen to so extraordinary a pitch of greatness), were he to delay the adoption of the most effectual measures to repel the attack he has already experienced, and to oppose the hostile effects of the confederacy armed against him. His Majesty has therefore authorized the undersigned officially to communicate to Count Wedel-Jarlsberg and Baron von Ehrensward, that an embargo has been laid upon all the Danish and Swedish ships in the ports belonging to His Majesty. But in the execution of this measure His Majesty will take care that no violent or severe proceedings shall be exercised on the part of His Majesty towards innocent individuals. His Majesty is still animated by the most anxious desire that the circumstances which have rendered these steps necessary may cease, and that he may be enabled to return to those relations with the Courts of Stockholm and Copenhagen, which existed between them, till that mutual good-understanding was interrupted by the present attempts to renew former pretensions.

(Signed) GRENVILLE

Reply of Baron Ehrensward, January 17, 1801, to the Notification of Lord Grenville regarding an Embargo on Danish and Swedish Ships.¹

The undersigned, Minister Plenipotentiary of His Imperial Swedish Majesty, received the official notification, by which his Excellency Lord Grenville, first Minister of State, signified to the undersigned, that His

¹*Collection of State Papers*, vol. 11, p. 221.

Britannic Majesty had ordered an embargo to be laid on all the Swedish ships that should be found in the harbors within his dominions. So unexpected an event between Powers who were in relations of friendship towards each other, was received with astonishment by His Imperial Majesty, who was not only unconscious of having given His Britannic Majesty the least cause of complaint, but on the contrary was entitled to have demanded indemnification for repeated aggressions. Actuated by this reflection, he rather expected that the notification was transmitted with the view to bury his grievances in oblivion, than to give occasion for fresh ones, which should renew the remembrance of the past.

As the English Court has stated, as the ground of this notification, that a maritime convention was in contemplation, it would doubtless have acted with more justice, had it waited for an official communication from the Swedish Court, which it most assuredly would in proper time have received, of a convention, which is considered in so odious a point of view, as to urge it to an act of violence against a Court, whose connection with England nothing else could have disturbed. As the dispute between the Russian and English Courts related to the island of Malta, and the declaration of the Danish Court referred to the convention of 1780, the undersigned can see no just reason why the Swedish Court, which had given no cause of complaint to the English, and from which no other declaration was required than what related to the note of the 31st of December, which has just been received, should be attacked in so hostile a manner before any answer had been given to the insinuations contained in that note.

The undersigned, who imparted the contents of the note of his Excellency Lord Grenville to his Court, is obliged, in conformity to the orders of his master, to protest, as far as by the present act he can formally protest, against the embargo laid on the Swedish ships, and all loss or damage that may be thereby occasioned. He demands, in the most forcible and expressive terms, that, in pursuance of the stipulations of the treaty of 1661, the embargo may be taken off, the continuance of which can no otherwise be considered than as a designed and premeditated declaration of war on the part of England, as well by the detention of the convoy, as in respect to the affair at Barcelona. The undersigned, whom the expression of the desire of the British Court could not escape, observes, in the hostile determination by which it is accompanied, only to give His Imperial Swedish Majesty cause

of complaint, as well by the detention of the convoy, as in respect to the affair at Barcelona. He wishes the British Court had conformed to the truth of its assurances by its actions, in which case this Court would have been actuated by corresponding sentiments.¹

The undersigned has the honor, etc.

(Signed) BARON VON EHRENSWARD

LONDON, *January 17, 1801.*

**Note of Lord Carysfort to Count Haugwitz regarding the Armed
Neutrality League, January 27, 1801²**

As the undersigned Ambassador Extraordinary and Minister Plenipotentiary has been directed by his Court to communicate to the Prussian Ministry His Majesty's note, which, by command of His Majesty the King of Great Britain and Ireland, was presented to the Ministers of Denmark and Sweden, he can not discharge this commission without likewise expressing his sincere satisfaction in being authorized to declare how thoroughly His Majesty is convinced that Prussia can never have sanctioned the measures which have given rise to the above-cited note. Those measures openly disclose an intention to prescribe rules to the British Empire, on a subject of the greatest importance; to force those rules upon Great Britain, and for that end, before any of the Powers who have concurred in it have given the smallest intimation to His Majesty, to enter into a league, the object of which is to renew pretensions which Great Britain at every time has considered hostile to its rights and interests, and so declared whenever an opportunity presented—pretensions which the Russian Court has abandoned, not only in fact, but which, by a treaty actually in force, Russia is bound to oppose, and the execution of which treaty His Majesty is entitled to insist upon. When a ship of war belonging to His Danish Majesty resisted by force the execution of a right, which the King of Great Britain and Ireland, by virtue of the clearest and

¹In consequence of the above official intelligence being received at Stockholm, all Swedish ships were immediately stopped from going to England, and an embargo was laid upon all English ships in the Swedish harbors.

²*Collection of State Papers*, vol. 11, p. 213.

most express stipulations of his treaties which the Court of Denmark had demanded, His Majesty, on that occasion, confined himself to the adoption of such measures as the protection of the trade of his subjects required to be given against that measure of hostility, which this conduct on the part of an officer bearing His Danish Majesty's commission, seemed to show. An amicable arrangement put an end to this dispute, and the King flattered himself, not only that all misunderstanding on that subject was removed, but amity between the two Courts was strengthened anew and confirmed. In this situation of affairs His Majesty must have learned with no less astonishment than concern, that the Court of Copenhagen was employed in negotiations to renew the hostile confederacy against Great Britain which took place in 1780, and that also great preparations were going on in the ports of Denmark. Under these circumstances the King must have been compelled to call for explanations from the Court of Denmark. At this moment he received information that a confederacy was signed at Petersburg, and the answer of the Danish Minister left no doubt respecting the nature and object of this convention, as he declared in the most express manner, "That these negotiations had in view the renewal of those relations which had been entered into between the same Powers in the years 1780 and 1781," adding, "that His Majesty the Emperor of Russia had proposed to the northern Powers the renewal of their connection in its original form." The engagements alluded to had for their object principles of maritime law which never had been recognized by the tribunals of Europe, and the contracting parties mutually engaged to maintain them by force, and to compel by force other nations to adopt them. They are still more repugnant to the express stipulations of the treaties which subsist between the Courts of Stockholm and Denmark, and the British Empire. The convention which these engagements were to renew was negotiated at a time when the Court of Petersburg had adopted hostile measures against the persons and property of His Majesty's subjects, and when nothing but the extraordinary moderation of the King could have authorized other Powers not to consider him as at open war with that Court. In such a state of things, nothing certainly could be more inconsistent with the ideas of neutrality, and nothing more distinctly indicate a hostile disposition, than that those engagements were not postponed till it was ascertained whether Russia was not to be considered as a belligerent Power. Such forbearance was the more to be

expected, and particularly from the Court of Copenhagen, as, by an express article of the league of 1780, the Danish ports and havens in Norway were placed at the disposal of Russia for the purpose of facilitating the prosecution of hostilities out of the Baltic. When, therefore, the King was informed by one of the contracting parties that the object of the negotiations which had been begun at Petersburg, without giving the least intimation, and which at last, according to the information received by the King, had terminated in the conclusion of a convention, was no other than to renew the former confederacy to press upon His Majesty a new code of law to which he had already refused his assent; and when moreover he had the most certain intelligence, and could no longer doubt, that the Powers of the Baltic, engaged in this transaction, were pursuing warlike preparations with the utmost activity; when one of those Powers had placed itself in a state of actual hostilities with His Majesty; no other alternative remained, but either to submit, or to adopt measures which were calculated to put an effectual stop to the hostile operation of a league, which, by the declaration of the Danish Court itself, was openly directed against His Majesty. Meanwhile His Majesty has not omitted on this occasion to display his wonted justice and good-will. Although he felt it necessary, for the maintenance of his rights, to secure some pledge against the hostile attacks which were meditated against his rights, yet he has taken the utmost care to guard against loss and injury to individuals. Firmly convinced that his conduct towards neutral States has been conformable to the recognized principles of laws, whose basis and sanction is to be found not in passing interests and momentary convenience, but in the general principle of justice; of laws which have been received and observed by the admiralty courts of all the maritime Powers of Europe: His Majesty does not yet forego the hope that the Courts of Stockholm and Copenhagen will not take upon them the responsibility that will fall upon the authors of the war; that particularly they will not expose themselves to that responsibility for the introduction of innovations, the notorious injustice of which has induced those Powers by which they were first broached, to oppose, when they found themselves at war; innovations besides, which are expressly repugnant to those treaties which have been concluded with His Majesty. The step on which His Majesty has resolved must have long been foreseen. The British Government has never concealed that it considered the league of 1780 as hostile,

and had never ceased that attention with which it watches over the rights of the nation. It immediately resisted the attempt to renew the principles which at the above-mentioned period had been agitated, and the undersigned declared to Count Haugwitz at the first conference he had with him on his arrival at Berlin, "That his Majesty would never submit to pretensions which were irreconcilable to the true principles of public law, and which strike at the foundations of the greatness and maritime power of his kingdoms." Still later, in the beginning of November, the undersigned had the honor to represent to his Excellency, as the Minister of a Power connected with His Majesty by the most intimate friendship, what disagreeable consequences must follow from the attempt of the northern Powers to press forward those pretensions. He has never ceased to renew this declaration, when, by the command of His Majesty, he has been the interpreter of that satisfaction given to the King by the repeated assurances of the friendship of His Majesty the King of Prussia, and of those constant sentiments of perfect justice of which His Majesty has never for a moment entertained a doubt. His Excellency Count Haugwitz will likewise easily recollect the time when the undersigned, ultimately convinced of the friendly intentions of the Prussian Government, communicated to him, by the command of His Britannic Majesty, the King's resolution to allow of no measures which had for their object to introduce innovations in the maritime law now in force, but, on the contrary, to defend that system in every event, and to maintain its entire execution as it had subsisted in all the Courts of Europe prior to the year 1780. If the Court of Denmark had announced in the most unequivocal manner, the real objects and contents of the engagements into which it had entered, the declaration of the Court, that Prussia was one of the Powers concerned in the negotiation, would have been sufficient to satisfy the King, and to prove to him that it could have no hostile views against his Government; and even still His Majesty is convinced that he may implicitly rely on the friendship of His Prussian Majesty. It is true, that, in relation to Great Britain and Ireland, there can be no similarity between the northern Powers and Prussia. Those Powers are connected with His Majesty by the stipulations of mutual treaties, which are less favorable to their interests, and which more or less modify and soften the rigor of the general law; whereas between His Majesty the King of Great Britain and Prussia no treaty of commerce exists, and all intercourse between them is regulated by the

general principles of the law of nations, and established usages. If, however, His Majesty were to consider his own sentiments, and the incessant wish he has shown to preserve the friendship of a monarch with whom he is connected by so many ties, he could not at all anticipate the possibility of a difference which might not easily and speedily be terminated by an amicable discussion. The repeated assurances of such sentiments on the part of His Prussian Majesty, which the undersigned has been empowered to transmit to his court, confirm this agreeable anticipation; and the known principles which have constantly directed His Majesty the King of Prussia, do not tend to countenance the supposition that the latter has entered into the confederacy, or can enter into the confederacy, to support by force principles in common with other Powers, whose hostile views against His Britannic Majesty have been openly proved. Whatever sentiments the Prussian Government may entertain in regard to the new principles themselves, yet it is too just, and knows too well what sovereigns owe to their people, and to one another, to favor for a moment the design to employ force in order to induce His Britannic Majesty to acknowledge a code which the latter deems inconsistent with the honor and security of his Crown.

(Signed) CARYSFORT

BERLIN, *January 27, 1801.*

British Orders of Council respecting the Embargo on Russian, Danish, and Swedish Vessels¹

At the Court of St. James's, the 28th of January, 1801; present, the King's Most Excellent Majesty in Council.

Whereas, His Majesty, by and with the advice of his Privy Council, has been pleased to cause an embargo to be laid upon vessels belonging to the subjects of Russia, Denmark, and Sweden, now within, or which hereafter should come into any of the ports of the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said vessels: and whereas it has been represented to His

¹*Collection of State Papers*, vol. 11, p. 222.

Majesty, that the goods on board several of the vessels so detained by the embargo are the property of His Majesty's subjects, or the property of persons not being subjects of Russia, Denmark, or Sweden, His Majesty is thereupon pleased, by and with the advice of his Privy Council, to order, as it is hereby ordered, that all goods laden on board Russian, Danish, or Swedish vessels, now detained under the said embargo, and intended to be exported, shall be delivered to the disposal of the owners or their agents, upon affidavit made and produced to the officer in whose custody the said vessels may be, that the said goods were not at the time of shipment, nor are now, the property of the subjects of Russia, Denmark, or Sweden; and also, that all goods which, by virtue of licenses under His Majesty's sign manual, have been imported in vessels belonging to the subjects of Russia, Denmark, or Sweden, shall in like manner be forthwith delivered to the disposal of the owners or their agents, on their making and producing a like affidavit, and on sufficient proof that His Majesty's license to import the said goods had been obtained.

And His Majesty is hereby further pleased to order, that all goods which have been imported into this country, in Russian, Danish, or Swedish vessels, without license under His Majesty's sign manual, and which are now detained by the embargo, shall likewise be delivered to the owners or their agents, on affidavit being made, that such goods were not at the time of shipment, nor are now, the property of subjects of Russia, Denmark, or Sweden; and on their giving sufficient bail to abide adjudication, if any proceedings should be commenced against the said goods within two months from the date of such delivery; but in case no such proceedings should be commenced within two months from the date of such delivery, then the bond so given to be void: and the Right Honorable the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Judge of the High Court of Admiralty, are to give the necessary directions herein as to them may respectively appertain.

W. FAWKENER

British Orders of Council respecting Payments to Subjects of Russia, Sweden and Denmark¹

At the Court of St. James's, the 28th of January 1801; present, the King's Most Excellent Majesty in Council.

Whereas His Majesty, by and with the advice of his Privy Council, has been pleased to cause an embargo to be laid upon vessels belonging to the subjects of Russia, Denmark, and Sweden, now within, or which hereafter should come into any of the ports of the United Kingdom of Great Britain and Ireland, together with all persons and effects on board the said vessels; His Majesty, by and with the advice of his Privy Council, is pleased to order, and it is hereby ordered, that no person residing within His Majesty's dominions do presume to pay any money or bills due or payable to, or on behalf of, any person or persons being subjects, or residing within the dominions of the Emperor of Russia, or of the Kings of Denmark or Sweden, or any of them, for the freight of merchandise imported in any Russian, Swedish, or Danish ship, which is detained under the said embargo, or which shall hereafter be brought into any of the ports of His Majesty's dominions, until His Majesty's pleasure shall be further known, or until other provision shall be made by law:—whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

W. FAWKENER

Note of Lord Carysfort to Count Haugwitz, regarding Relations between Great Britain and Russia, February 1, 1801²

The undersigned, Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty, has the honor to address himself to Count Haugwitz, by command of his Court, in order to communicate to him the following particulars:

The spirit of patience and of moderation which prevails in the note of Lord Grenville to Count Kostopshin, will not escape the notice of his Excellency.

¹*Collection of State Papers*, vol. 11, p. 223.

²*Collection of State Papers*, vol. 11, p. 224.

A solemn treaty between the two Powers had given the respective subjects of each a complete security for the prosecution of their trade; and even, in case of a rupture, it had been agreed, that not only no embargo should be laid, but that the subjects on both sides should have a whole year to carry away their effects, and to arrange their affairs in the country.

Notwithstanding these sacred stipulations, the ships of British subjects in the Russian ports are detained, and their property in an extraordinary manner, upon various pretexts, sequestered or sold. Their persons are likewise put under arrest, and a number of British sailors have been forcibly taken out of their ships, and been sent under guard and in the midst of winter into the interior of the country.

In consequence of these new acts of violence, Lord Grenville, Secretary of State for Foreign Affairs, received His Majesty's order to address a second note to Count Kostopshin, in which His Majesty stated his having appointed a commissary to superintend the safety and the wants of his unfortunate subjects; a circumstance which is usual even among the Powers that are actually at war. Lord Grenville in that paper likewise formally insisted on the execution of the treaty of 1793. But, though he made the strong and just remonstrances which such circumstances demanded, yet His Majesty's constant disposition again to restore the former connection and good understanding between the two Crowns has been in vain.

His Britannic Majesty anticipates the sentiments which the King of Prussia will entertain when he is informed of the unheard-of and unjustifiable manner in which His Britannic Majesty's remonstrances were heard by the Court of St Petersburg. The note of Count Kostopshin to Lord Grenville, of the 20th of December, O. S. a copy of which the undersigned is ordered to communicate to Count Haugwitz, will enable His Prussian Majesty to judge whether the undersigned is called upon to make any observations upon it.

The undersigned has received orders to make known to the Court of Berlin, that this conduct, on the part of the Emperor of Russia, has put an end to all correspondence between the Courts of London and St. Petersburg; and the connection between the extraordinary violence committed upon the persons and property of His Majesty's subjects, and with the conclusion of a hostile confederacy, which the Emperor of Russia has formed for the express and avowed purpose of introducing those innovations into the maritime code, which His

Britannic Majesty has ever opposed, has at length produced a state of open war between Great Britain and Ireland and Russia.

It will not be useless to remark, that the Emperor of Russia, at the present crisis, can not be considered as a neutral Power, because he was at war with Great Britain before he himself was at peace with France.

The undersigned shall have done justice to the charge with which he is intrusted, when he declares, in the name of the King his master, that His Majesty, on weighing the present circumstances of Europe, is willing to forbear demanding from the Court of Prussia that succor which was stipulated by treaty, though he considers the *casus foederis* as completely coming within those circumstances in which they stand; and that His Britannic Majesty can not doubt that he will receive from his ally all the proofs of friendship which the events of this new war would have required.

The undersigned has the honor to be, etc.

(Signed) CARYSFORT

BERLIN. *February 1, 1801.*

Swedish Protest of February 7, 1801, on the subject of the alleged Proceeding in the Harbor of Barcelona¹

By this public instrument of protest, be it known and made manifest to all people whom it may concern, that on the seventh day of February one thousand eight hundred and one, before me Thomas Pain, notary public, residing in the town and port of Dover, in the county of Kent, by lawful authority admitted and sworn, personally appeared Martin Rubarth, master of the ketch or vessel called *Hoffnung*, belonging to Barth, in Swedish Pomerania, of the burden of thirty-eight heavy Swedish lasts, or thereabouts, now lying in Dover harbor, and Jacob Christopher Glasen, and Johan Hendrick Heuer, mariners, also belonging to the said vessel, and upon their faith and honesty solemnly de-

¹*Collection of State Papers*, vol. 11, p. 225. This protest relates to the Swedish ship which was alleged, in the correspondence between Spain and Sweden, to have been made use of by the English for the purpose of capturing the two frigates at Barcelona. The master and people made this protest respecting that transaction.

clared, and for truth affirmed and witnessed by the interpretation of Roelof Symons, of Dover aforesaid, gentleman; that the said vessel took in ballast at Oporto, and set sail and departed from thence in good order and condition, staunch and tight, on the 19th day of July last past, with the wind favorable, bound to the Mediterranean in search of freight, and proceeded, with easterly winds and variable weather, without any thing particular occurring, until the 23d day of August following, when they arrived and brought up in the road of Alicant, and were there put under quarantine, and on the 25th in the afternoon released from such restraint, when the said master made inquiries for freight, but none could be obtained, and the wind was at north-east and east-south-east, and they replenished their stock of water and got in readiness to proceed; and on the 28th weighed with a light breeze northerly, and steered for Barcelona; and on the 29th being under Cape Saint Martius, they were boarded by a Spanish privateer, and her crew took from the said vessel some stock fish and vegetables, and then quitted her, and they proceeded, with variable winds and weather, without any thing particular occurring, until the 3d day of September following, when, being between Sitger and the Castle de Fel, two other Spanish privateers rowed from the land towards the said vessel and hailed her, when the said master informed them they came from Alicant, and were destined to Barcelona; and the people on board the said privateer then inquired whether the said appearers had seen any English frigates or other vessels, which being answered in the negative, the said privateers quitted the said vessel, and steered south-west, and it fell calm; and on the 4th, at half past one o'clock in the afternoon, a breeze sprung up at west-south-west by west, the point of Cape de Fel bearing north-west by west, distant about one and a half German miles, and they steered along the land for Barcelona aforesaid, and about five o'clock in the afternoon saw, under the land of Lobregat, a line of battle ship and a frigate with Spanish colors flying, and a boat and crew came from the shore, which the said appearers afterwards found belonging to the said line of battle ship; and the crew speaking the English language, the said appearers found that the colors they had seen flying were false, and that the said ships of war were English; and the crew of the said boat then asked from whence the said vessel came, where bound, and what she was laden with? to which the said master replied, he came from Alicant with ballast, and intended going to Barcelona to procure a freight, and had

brought a cargo of staves from Pillau to Oporto; whereupon the said boat's crew examined the said vessel's papers, and asked the said master if he had letters to any person in Spain, as, if he had, his said vessel would be a good prize; who replied, no such letters were on board; when the said boat and crew quitted the said vessel, and commanded the said master to lay his top-sail back, and keep after the said line of battle ship, and that when they got on board, if a flag of any nation was hoisted, he might proceed on his voyage; but no such flag was hoisted, and the said two ships of war kept in for the land, and fired a shot at the said appearers' vessel, which obliged them to follow; and a boat with two officers and a great number of men came on board, and took the command and possession of the said vessel; when the said master asked what was their intention for so doing? and the said officers replied, that they did not know, but were obliged to follow their commander's orders; and toward evening, when it came on to be dark, they kept out to sea with the top-sail constantly laid back, and then many boats (to the best of the said appearers' recollection eight in number) came alongside, filled with armed officers and men, and they got on board the said vessel, at which the said appearers were greatly alarmed; and the said master asked the officer who commanded the man at the helm, what was intended to be done with the said vessel and her crew? who informed him, that the captain was on board, and that the said master might go forward and inquire of him, which he accordingly did; and he commanded him to be silent, and spoke to another officer, who put a pistol to the said master's breast, and informed him, if he uttered a word to any man, a shot should end his existence; and they steering the said vessel for Barcelona Road, the said master begged he might be allowed to get her anchors ready, which was permitted; and while the same was doing, one of the crew spoke a few words, when an officer immediately jumped up, and would have killed him, had he not fortunately been prevented by another officer, and between eight and nine o'clock in the evening they arrived in Barcelona Road, and were hailed by a Spanish frigate riding at anchor, when the said master not being permitted to reply, one of the said English officers called out, "Sueco, Sueco," and a firing began from the said Spanish frigate at the said vessel, when the said English officers and people took to their boats and proceeded towards her, and the firing continuing, the said appearers put their helm a-lee, and ran into the cabin to prevent being shot, and soon afterwards the said firing

ceased, when the said master and his crew got on the deck to save the sails, and bring the said vessel up; and as soon as they had let the anchor go, and hauled the foresails down, another firing commenced, by which Hans Peter Rubarth (the then mate of the said vessel, and brother to the said master) was shot through his left shoulder and arm, and fell to all appearance dead; at which the said appearers were much alarmed, and let the said vessel drive with the little cable she had out, and hastened to assist him into the cabin; and the said appearers discovered, that the said English officers and men captured in their said boats two Spanish frigates, in which they passed the said vessel, and the wind got more off the shore, and the firing continued, and the shots went over her abaft, and she drove into deep water; and, to prevent drifting out to sea, they let go both anchors, and made the sails fast, and, when the said two Spanish frigates had got out a considerable distance to sea, some Spanish gun-boats came near, whereupon the said appearers were much alarmed, apprehending they would still consider the said vessel an enemy, and sink her, and therefore hoisted a light as a signal that they were friends; and the people on board the said gun-boats inquired if they had any Englishmen left, when the said master informed them there were not, but that his mate was severely wounded; when one of the said gun-boats came alongside, and her crew inquired if any other person was sick; and being answered that all the others were in perfect health, an officer came on board, who seeing the said master weeping over his wounded brother, promised to acquaint Mr. Almgren, the Swedish consul at Barcelona aforesaid, of his distress, and to send people on board, to assist in weighing the anchors, and conduct the said vessel into the harbor of Barcelona aforesaid to obtain a surgeon; that on the 5th one came on board with four men, and she was towed into the said harbor, and moored in a proper place to perform quarantine, and continued under such restraint ten days, and was then released, and during the same the said master was obliged to keep the said four men, and also the surgeon and two other men, to watch the said mate; and the rigging, sails, and yawl, which were shot and much damaged, they repaired and stoppered as well as they could, and as soon as *prattic* was obtained, the said mate was taken on shore to the hospital at Barcelona aforesaid; and the said master having obtained freight on the 9th day of October last, sailed from Barcelona aforesaid, but the said mate continued so ill, he was obliged to be left in the said hospital. That in the

latter part of the month of December following, the said master received a letter, dated the 14th day of the said month, from Daniel Christopher Hingst, of Barth aforesaid, the owner of the said vessel stating that the said mate died of his wounds in the hospital of Barcelona aforesaid, on the 29th day of the said month of October, leaving a widow and three infant children. And also the said appearers declared, that they have been informed, and verily believe, that the said line of battle-ship is called the *Minotaur*, Capt. T. Lewis, but they have not been enabled to learn the name of the said English frigate, or of her commander, and that they used their utmost endeavors for the preservation of the said vessel; that whatever damage or loss the same sustained was not occasioned by or through any neglect or default of them, or any of the then crew, or by reason of any defect or fault in the said vessel or her tackling, but merely by means of the said capture. Therefore the said master has desired a protest; wherefore I, the said notary, at his request, have solemnly protested, and by these presents do protest, against the said Captain T. Lewis, and the other officers and crew of the said ship *Minotaur*, and also the officers and crew of the said English frigate, and every other person and cause occasioning the said capture and detention, of and for all losses, costs, charges, damages, demurrages, suits, and expenses already and hereafter to be suffered and sustained thereby, to be allowed and recovered in time and place convenient. Thus done and protested in Dover aforesaid, in the presence of James Moon and John Finnings, witnesses thereto, called and requested. In testimony of the truth thereof, the said appearers, interpreter, and witnesses, subscribed their names in the registry of me the said notary; and I the said notary have hereunto set my hand, and affixed my notarial seal. Dated the day and year first above written.

(Signed) THO. PAIN

The said Martin Rubarth, Jacob Christopher Glasen, and Johan Henderick Heuer, were sworn on the Holy Evangelists to the truth of the foregoing protest; the said Roelof Symons being first sworn faithfully to interpret to them, at Dover aforesaid, the said 7th day of February 1801, before me,

(Signed) THO. PAIN

A Master Extraordinary in Chancery

Hoffnung, Martin Rubarth Master. Protest dated February 7th, 1801.

Reply of Count Haugwitz to Lord Carysfort, February 12, 1801¹

The undersigned, State and Cabinet Minister, has laid before His Prussian Majesty the two notes which Lord Carysfort, Envoy Extraordinary and Minister Plenipotentiary from His Majesty the King of Great Britain and Ireland, has done him the honor to transmit to him on the 27th of January, and 1st of February last.

The undersigned having it in commission to return an explicit and circumstantial answer, is under the necessity of informing Lord Carysfort, that His Majesty can not see without the utmost grief and concern, the violent and hasty measures to which the Court of London has proceeded against the northern naval Powers. Error alone can have given occasion to these measures, as the assertions in the note of the 27th sufficiently show. In that it is said, that the maritime alliance "has for its object, to annul the treaties formerly concluded with England, and to prescribe laws to her, with respect to the principles of them; that the neutrality is only a pretext to impose these laws on her by force, and to establish a hostile alliance against her."

Nothing, however, is farther from the above-mentioned negotiation, than the principles here supposed. It is founded in justice and moderation, and the communication of a copy of the convention to such of the belligerent Powers as had the justice and patience to wait for the same, will prove this beyond the possibility of a denial.

When in the beginning of January the Minister of His Britannic Majesty officially proposed to the undersigned, the question, "whether the northern Courts had actually concluded the confederation which had been reported; and whether Prussia had acceded to it?"—the King conceived that the respect which sovereigns owe to each other, and the liberty possessed by every independent State to consult its own interests, without rendering an account to any other Power, authorized him to withhold any communications relative to himself and his allies; and contented himself with answering, that as he had seen, without interfering, the connections which England had entered into without consulting him, he considered himself entitled to the same confidence; and that if the King of Great Britain thought it his duty to support the rights and interests of his kingdom, His Prussian Majesty considered it as not less his duty to employ every means in the defense of the rights and interests of his subjects.

¹*Collection of State Papers*, vol. 11, p. 229.

This answer might have sufficed a few weeks since; but in the situation in which affairs now are, the King thinks himself called upon to make an explicit declaration to the Court of London, relative to the spirit of the treaty, which has probably been attacked because it was not known, and which is far from having the offensive views of which the contracting Powers have been arbitrarily accused. They have expressly agreed, that their measures shall be neither hostile nor tend to the detriment of any country, but only have for their object the security of the trade and navigation of their subjects. They have been attentive to adapt their new connections to present circumstances. The strict justice of His Majesty the Emperor of Russia has, even in the detail, proposed modifications, which alone might be sufficient to indicate the spirit of the whole. It has since been determined, that the treaty shall not be prejudicial to those which had before been concluded with any of the belligerent Powers. It was also resolved, that this determination should be candidly communicated to those Powers, to prove the purity of the motives and views of the contracting parties. But England would not allow time for this; had she waited this confidential communication, she might have avoided those intemperate measures which threaten to spread the flames of war still wider.

Besides, it only depended on England, previously to draw satisfactory information from the correspondence with Denmark, if, instead of taking hold of two isolated passages, which Lord Carysfort, in his first note, extracted from Count Bernstorff's note of the 31st of December, the Court of London had listened to the solemn declaration which it contained: "That it could never have been supposed for a moment that Denmark had formed hostile projects against England, or plans that could not subsist together with the maintenance of harmony between the two Crowns, and that the Court of Copenhagen congratulated itself on finding an opportunity for contradicting, in the most positive manner, such unfounded reports." This plain and precise declaration agrees with the language which the undersigned had used more than once to Lord Carysfort, when speaking on that subject; and it can scarcely be conceived how the English Court, after that declaration had been received, could conclude from the note of the Minister of Denmark, "That the engagements of the contracting Powers had for their object the introduction of principles of naval rights, which had never been acknowledged by the tribunals of Europe, and which were of a hostile tendency against England." The conclu-

sion is totally false, and, is not authorized even more by the contents of the answer of the Danish Court, than the other unmerited reproach made to it, "of having renewed an alliance of a hostile tendency against England, and of being actively employed in armaments with that view." Never were measures more evidently defensive, than the measures of the Court of Copenhagen, and their spirit will be misconceived still less, when it is considered what menacing demonstration that Court had experienced from the British Government, on occasion of the affair with the *Freya* frigate, before the above measures were resorted to. England's arbitrary conduct on this occasion is naturally explained by the pretensions which it had made for some time past, and which it has repeatedly renewed in the notes of Lord Carysfort, at the expense of every commercial and naval Power. The British Government has, in the present more than in any former war, usurped the sovereignty of the seas; and by arbitrarily framing a naval code, which it would be difficult to unite with the true principles of the law of nations, it exercises, over the other friendly and neutral Powers, an usurped jurisdiction, the legality of which it maintains, and which it considers as an imprescriptible right, sanctioned by all the tribunals of Europe. The sovereigns have never conceded to England the privilege of calling their subjects before its tribunals, and of subjecting them to its laws, in cases where the abuse of power has got the better of equity, and which, alas! are but too frequent. The neutral Powers have always had the precaution of addressing to it the most energetic reclamations and protests, but experience has ever proved their remonstrances fruitless; and it is not surprising, that, after so many repeated acts of oppression, they have resolved to find a remedy against it, and for that purpose to establish a well-arranged convention, which fixes their rights, and which places them on a proper level even with the powers at war.

The naval alliance, in the manner as it has just been consolidated, was intended to lead to this salutary end, and the King hesitates not to declare to His Britannic Majesty, that he has again found in it his own principles, that he is fully convinced of its necessity and utility, and that he has formally acceded to the convention, which has been concluded on the 16th of December, last year, between the Courts of Russia, Denmark, and Sweden. His Majesty is, therefore, among the number of the contracting parties, and has bound himself, in that quality, not only to take a direct share in all the events which interest

the cause of the neutral Powers, but also, in virtue of his engagements, to maintain that connection by such powerful measures as the impulse of circumstances may require. The note of Lord Carysfort mentions a subject, to which His Majesty believes himself neither obliged to answer, nor even to have a right of entertaining an opinion with respect to it. There exist discussions between the Courts of Petersburg and London, which have by no means anything to do with the business which the latter has interwoven with it. But in the same measure in which the conduct of Prussia has hitherto been directed by the most blameless impartiality, the King's conduct will henceforth be directed by his regard for engagements, which in themselves are a proof of it. To stipulations which contain nothing hostile, and which the safety of his subjects required, he owes all the means which Providence has laid in his power. Unpleasant as the extremes may be to which England has proceeded, yet His Majesty doubts not the possibility of a speedy return to conciliating and peaceable dispositions, and he relies on the sentiments of equity which, on former occasions, he has had the advantage of meeting with in His Britannic Majesty.

It is only by revoking, and by entirely taking off the embargo, that affairs can be brought to their former situation; and it is for England to judge whether it ought to come to that resolution, in order to offer means to the neutral Powers for proceeding to those communications which they intended to make.

But while those measures exist, which have been resorted to from hatred against a common principle, and against an alliance which can no longer be shaken, the hostile resolution, which must be the consequence, will be the necessary result of the treaty; and the undersigned is ordered to declare to the Minister of His Britannic Majesty, that the King, while he expresses his concern at events of which he has not been the cause, will secretly fulfil the engagements prescribed to him by treaties. The undersigned, thus executing his orders, has the honor of assuring Lord Carysfort of his high esteem.

(Signed) HAUGWITZ

12th February, 1801.

Russian Proclamation interdicting the Transportation of Merchandise through Prussia, February 12, 1801¹

His Excellency the Civil Governor and Counselor of State, Chevalier von Richter, has received the following communication from the Commercial College of the empire: "That His Imperial Majesty, being convinced by experience, that the productions and merchandise of his empire were exported by Prussia into England, His said Majesty has thought proper to order, that the transportation of these productions and merchandises through Prussia, whether by land or sea, shall be severely prohibited; and that, in order to accomplish this sovereign order, the most severe inspection shall take place, in conformity with the ukase of the 15th of December, 1800. The Commercial College has, in consequence, required all civil governors, first, to communicate through the medium of the magistrates, this order to the body of the merchants; secondly, to order the magistrates to instruct their brokers to insert, as a stipulation in their contract, whether made with foreign or Russian merchants, that the articles bought or sold shall not, under any pretence, be sent into Prussia by any channel. The two parties shall bind themselves to this. The magistrates are also bound to suffer none of the merchandises to pass thither on any pretence; and if any one shall refuse to obey this order, they are to seize the articles, and to send advice thereof forthwith."

In consequence, this order, after being transmitted by his Excellency the Civil Governor in Council, in order to its being correctly executed, is, by these presents, communicated to the knowledge of all the merchants in this city.

Dated RIGA, *February 12, 1801.*

Note of Count Wedel-Jarlsberg to the British Minister regarding the Embargo on Danish Vessels²

LONDON, *February 23, 1801.*

The undersigned, having informed the King his master of the official communication of Lord Grenville, dated the 15th January, last, has

¹*Collection of State Papers*, vol. 11, p. 238.

²*Collection of State Papers*, vol. 11, p. 233.

received orders to declare, that His Majesty is deeply affected at seeing the good understanding which has hitherto subsisted between Denmark and Britain, suddenly interrupted by the adoption of a measure as arbitrary as injurious on the part of Great Britain; and that he is not less afflicted and alarmed at seeing that measure justified by assertions and suppositions as unjust as ill founded. He remarks, with surprise, that, by confounding the cause of the measures taken in Russia against the interests of Great Britain, with the object of the convention relative to neutral navigation, the British Government evidently mixes two affairs which have not the least connection with each other. It is a subject of perfect notoriety, that the incident of the occupation of Malta by the troops of His Britannic Majesty, has alone been the occasion of the embargo on the British ships in the ports of Russia, and that the Ministers of the neutral Courts at Petersburg acted according to their full powers and instructions anterior to that event. The dispute relating to it is absolutely foreign to the Court of Copenhagen. It knows neither its origin nor foundation, or at least but very imperfectly, and its engagements with Petersburg have no relation whatever to it. The nature of these engagements has been solemnly declared to be only defensive; and it is inconceivable how general principles, conformable to every positive obligation, and modified according to the stipulations of treaties, could be justly considered as attacks on the rights or dignity of any State whatever. While the Powers who profess them require only their acknowledgment, the conflict of principles reciprocally maintained, can not be provoked but by those means which, operating as a denial of facts, place them in direct and inevitable opposition. The undersigned, by order of the King his master, calls the serious attention of the British Government to these reflections, and to these just and incontrovertible truths; they are analogous to the loyal sentiments of a sovereign, the ancient and faithful ally of Great Britain, who is not only incapable of offering, on his part, any injuries real or voluntary, but who has well-founded titles to a return of forbearance and justice. The prompt cessation of proceedings hostile to the interests of Denmark, is a circumstance to which His Majesty still looks forward with the confidence he has ever wished to entertain with regard to His Britannic Majesty; and it is in his name, and conformably to the instructions expressed on his part, that the undersigned insists on the embargo placed on the Danish vessels in the ports of Great Britain, being immediately taken off. By a constant series of moderation on

the part of the King, the measures to which the outrageous proceedings of the British Government authorized him to have had recourse, have been suspended, His Majesty deeming it an act of glory to give, by this means, a decisive proof of the falsehood of the suspicions advanced against him, and of the doubts thrown on his intentions. But if, contrary to all expectation, the British Government persists in its violent resolution, he will see himself, with regret, reduced to the urgent necessity of exerting those means which his dignity and the interests of his subjects will imperiously prescribe.

(Signed) WEDEL-JARLSBERG

**Note of Count Wedel-Jarlsberg to the British Minister regarding
the Embargo on Danish Vessels¹**

LONDON, *March 4, 1801.*

The undersigned has constantly reposed an unlimited confidence in the sentiments and moderation of His Britannic Majesty. He has consequently only endeavored, in the preliminary note of Lord Hawkesbury, dated the 25th of last month, in answer to his official note of the 23d, to discover the expression of an assurance of these sentiments which should be transmitted to Copenhagen; and he is persuaded that the effect of them on the part of His Britannic Majesty will be manifested, by calling, in the most efficacious and satisfactory manner, the attention of the Government to the representations of His Danish Majesty, transmitted through the organs and offices of the undersigned. But as the adoption of conciliatory measures is constantly found suspended, and as, on the contrary, those of violence and injustice are daily accumulating, the undersigned can not acquiesce, in silence, in the continuation of this state of things, which only tends to bar the way to amicable explanations, and to compromise the dearest interests of each nation. He hastens, in consequence, to renew with earnestness, the demand made in the name of his Court, that the embargo placed on the Danish vessels should be immediately taken off. And, in ex-

¹*Collection of State Papers*, vol. 11, p. 234.

pectation of a satisfactory answer, he has the honor to assure his Excellency Lord Hawkesbury of his respectful consideration.

(Signed) WEDEL-JARLSBERG

Note of Baron Ehrensward to Lord Hawkesbury regarding the Embargo on Swedish Vessels, March 4, 1801¹

The undersigned, Minister Plenipotentiary of His Swedish Majesty, has the honor to transmit to his Excellency Lord Hawkesbury, first Secretary of State of His Britannic Majesty, a printed copy of the naval convention concluded on the 16th Dec. 1800, between His Swedish Majesty and His Majesty the Emperor of all the Russias, as well as a printed copy of the naval regulations which the King has recently ordered to be drawn up.

The undersigned, who, at the command of his Court, has the honor to make this communication to the Minister of His Britannic Majesty, has it likewise in commission expressly to declare, that Their Majesties, by the said naval convention, have reciprocally determined and settled those rights which, as neutral Powers, they believe themselves entitled to, and by the naval regulations have ascertained those duties, for the performance and observance of which, on the part of their subjects, they, as neutral Powers, make themselves answerable. The object of Their Majesties is to confirm and strengthen their rights of neutrality, and to promote the repose of their respective States, by the naval convention they have entered into; and nothing is farther from their intention than by such a step to provoke hostilities. The respect which is due to the rights of nations and to treaties, the consciousness that their own interests are inseparably united with the interests and the love of justice and peace, are the only motives by which Their Majesties have been actuated: they have, therefore, learnt, with the greatest astonishment, that the first news of the conclusion of this convention in England, has been the occasion of so violent a measure as that of laying an embargo on the Swedish ships.

So far from desiring to introduce any innovations with respect to

¹*Collection of State Papers*, vol. 11, p. 235.

the maritime State of Europe, by the assertion of their rights of neutrality, Their Majesties are sensible that it gives no power whatever where those rights were not acknowledged by former treaties. England has seen those treaties; England has seen those treaties executed; they were officially communicated to her, and she did not protest against them. In like manner it was, with regard to the convention of 1780 and 1781; and the Ministry, who now proceed with so much violence, know that the partial renewal of that convention between Sweden and Denmark in 1794, and the armament that followed, operated, during a period of three years, without ever being considered as grounds for hostilities; yet a similar convention is now deemed an hostile confederacy against England. A line of conduct so contradictory, proceeds not from the circumstance of the principles and claims of neutral rights having been now enforced; but it seems to have its foundation in that maritime system which England has established in the course of the present war. It appears also, that that Government, which Europe, from its pacific sentiments, has so often endeavored to convince of the injustice of its pretensions, has now determined to commence a war for the subjection of the sea, after it has rendered itself so renowned in the war undertaken for the freedom of Europe.

If the British Minister will refer to the conduct of England against Sweden, and the neutral Powers in general, during this war, he will find the real cause why His Swedish Majesty has been induced to believe that the formal alliance of several Powers, acting upon the same principles, would more effectually tend to convince the Court of London of the validity of those principles, than by any one Power renewing those reclamations which have hitherto been made in vain; at the same time His Majesty never supposed that such an alliance would be considered as an act of hostility. The British Minister complains that the Court of London was not before instructed of the intention of the respective Courts to renew the convention of 1780; but in the same note he states, that England had entered into engagements this war with its allies respecting neutrals; thus the avowal of the British Minister is an answer to his own charge.

If His Majesty was not fully convinced of the innocence of his intentions, and if he was desirous of deviating from that line of moderation he has ever observed, he might make an invidious and censurable enumeration of the conduct of England; of the unpunished offenses of the commanders of English ships of war, even in Swedish

harbors; of the inquisitorial examinations which the captains and crews of the ships detained, as well in the West Indies as in England, have been subject; of the detention of the convoy in 1798; of the deceitful chicanery with which the proceedings of the courts of admiralty were accompanied; of the absolute denial of justice in many instances; and lastly, by the insult offered to the Swedish flag at Barcelona. His Swedish Majesty must, doubtless, state among the offenses of which he has cause to complain, that after one of his Ministers had been sent to the British Court, its aggressions, instead of being admitted and remedied, were justified. But he has sought no revenge; His Majesty wishes only to procure that security to his flag to which it is entitled. In consequence of this sentiment, the undersigned is empowered to declare, that the British Court shall acknowledge the rights of Sweden; that it shall do justice with regard to the convoys detained in 1798, as well as respecting the violence offered to the Swedish flag at Barcelona; and above all, that it shall take off the embargo which has been so unjustly laid on the Swedish ships. His Majesty will, with the greatest pleasure, see his ports again opened to the trade of England, and the ancient good understanding between the two Courts renewed. His Majesty, impressed with the dignity due to his empire, has, in consequence of the embargo laid upon the Swedish ships, placed a similar embargo on all English vessels in the harbors of Sweden.

As the pacific tendency of the present convention has been proved to a demonstration, His Majesty therefore hopes that no consideration, respecting any accidental occurrence which may have taken place between the ally of His Majesty the Emperor of Russia and the Court of London, will be introduced. The act of the convention itself proves, that its bases are the rights of neutrality, and that it is in its nature unconnected with every other subject of dispute.

While the undersigned Minister Plenipotentiary of His Swedish Majesty recommends the contents of this present note to the earnest consideration of the Minister of His Britannic Majesty, he has the honor to entreat that his Excellency Lord Hawkesbury will transmit him an answer, which he hopes will speak the sentiments of the King his master.

His Majesty has commanded the undersigned to present this to his Excellency. Should the conciliatory views with which it was dictated prove fruitless, it is His Majesty's opinion, that the presence of the undersigned at the Court of London will no longer be of any advantage.

The undersigned has the honor to assure his Excellency Lord Hawkesbury of his highest esteem.

(Signed) THE BARON VON EHRENSWARD

LONDON, *March 4, 1801.*

Reply of Lord Hawkesbury to Baron Ehrensward, March 7, 1801¹

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note of Baron Ehrensward, His Swedish Majesty's Minister Plenipotentiary, of the date of the 4th instant; His Majesty has already repeatedly communicated his fixed unalterable determination to maintain those established principles of maritime law which have been found, by the experience of ages, best calculated to afford equal security to the just rights and interests, as well of neutral as of belligerent powers.

The explanations attempted to be given to the present convention, have in no degree weakened the impression which the first perusal of it produced, that the views and motives of the contracting Powers were hostile to His Majesty's dominions; and this impression is most fully confirmed by the consideration, that the northern Courts have recurred to the principles of the convention of 1780 at a moment when the circumstances of the war and the relative state of the navies of the belligerent Powers, convert that which was pretended to be a measure of common equity to all countries, into an instrument of exclusive injury to Great Britain.

Under these circumstances, the embargo on Swedish vessels can be considered in no other view than as an act of just and necessary precaution, which will not be revoked so long as the Court of Stockholm continues to form a part of a confederacy which has for its object to impose by force on His Majesty a new system of maritime law, inconsistent with the dignity and independence of his Crown, and the rights and interests of his people.

The undersigned requests Baron Ehrensward will accept the assurance of his high consideration.

(Signed) HAWKESBURY

DOWNING STREET, *March 7, 1801.*

¹*Collection of State Papers*, vol. 11, p. 238

Manifesto of His Highness Prince Charles, March 28, 1801, regarding the Danish Occupation of the City of Hamburg¹

By the express command of His Majesty the King of Denmark and Norway, it is hereby declared:

The attacks made by the English Government, in opposition to all the principles of the laws of nations, against the navigation and trade of those Powers that have confederated together for the purpose of securing and maintaining the rights of neutral flags; and the arbitrary and powerful measures adopted by that Government, notwithstanding the most pressing and continued remonstrances; have imposed on these Powers the disagreeable necessity of taking every previous step that may serve to bring the said Government to a more just way of thinking.

As the exclusion of the English navigation and trade from the Elbe, must be an effectual means of promoting this object; and as the possession, for a time, of the Imperial city of Hamburg has been considered as unavoidably necessary for that purpose; His Danish Majesty, unwilling as he is to adopt a measure of this kind, has been obliged to give way to a crowd of imperious circumstances; and consequently has charged me to carry the measure into execution with the troops under my command.

Conformably to the positive orders enjoined me, I will most vigilantly take care, that the strictest discipline shall be observed by the troops that enter the city, while they remain there; and that the tranquillity, the property, and municipal rights of the inhabitants shall not only be undisturbed and unmolested, but that the same shall be most carefully preserved and guarded for them. I expect, therefore, that all persons shall conduct themselves peaceably and friendly towards the royal troops commanded by me; and that nobody shall find fault with that necessary severity which must be put in force in case of a contrary behavior.

CHARLES, PRINCE OF HESSE

PINNEBERG, *March 28, 1801.*

¹*Collection of State Papers*, vol. 11, p. 242.

Proclamation of the Senate of Hamburg regarding the Danish Occupation of the City, March 29, 1801¹

As circumstances of a political nature have created the necessity for the Imperial Danish troops to remain in the neighborhood of this city, and as nothing is to be apprehended on that account, either with respect to the freedom and independence of the State, or the property and safety of the inhabitants; therefore the most illustrious Senate exhort all citizens and inhabitants to confide in their pressing intercessions upon the occasion; and that, with the assistance of the College of Citizens, they will do their utmost for the advantage and safety of the State. And the most illustrious Senate trust that every one will demean himself peaceably and obediently, and especially with decency and propriety towards the foreign military; by which alone the general safety can be ensured, and those inconveniences avoided, to which any inconsiderate and opposite conduct would inevitably subject the city.

Given at our Senate-house, the 29th March 1801.

Danish Ordinance of March 29, 1801, laying an Embargo on English Ships and Goods²

We Christian VII, etc., declare as follows: Whereas all amicable means for taking off the embargo laid on the ships and property of our subjects in English ports, have proved fruitless; we have been obliged to give directions that all ships and goods belonging to the subjects of the British Government, and which are now in our ports, shall be detained and laid under an embargo. All magistrates of towns, and officers of our customs, are directed to assist in carrying this measure into effect.

The same persons are to prepare every thing that is necessary for the preservation of the goods and ships so detained; and every care must be taken of the crews of the ships.

Given under our hand and seal at Copenhagen, on the 29th of March 1801.

CHRISTIAN R.

¹*Collection of State Papers*, vol. 11, p. 242.

²*Collection of State Papers*, vol. 11, p. 243.

Declaration of the King of Prussia, March 30, 1801, to the Royal and Electoral College at Hanover and to the Commanders of the Hanoverian Troops¹

In consequence of the oppressions which neutral navigation and commerce have sustained on the part of the English navy, since the commencement of this war, the different Powers therein interested could no longer abstain, after so many ineffectual complaints, from protecting their violated rights with a greater degree of energy.

The result was the convention formed on the 16th of December, 1800, at St. Petersburg, between Russia, Denmark and Sweden, the just and moderate principles of which had formerly been adopted and followed by the Court of London itself; and His Majesty the King of Prussia, who had likewise felt this violence injurious to his States and his flag, did not hesitate to accede to that treaty.

The contracting Courts were on the point of communicating to the belligerent Powers the convention they had agreed to, and of forming arrangements with them, when England, by an unexpected proceeding, disconcerted this amicable design, by laying an embargo on all the vessels of the naval Powers of the north in her ports, and thus declaring herself their enemy.

It might have been expected that His Majesty the King of Prussia would not regard this conduct with satisfaction or indifference. Accordingly he soon after transmitted to the Court of London the declaration already known, of the 12th of February, formally and publicly avowing his accession to the convention of St. Petersburg, and indicating, at the same time, the means by which the differences that had taken place might be accommodated, and a total rupture avoided.

But, instead of adopting the proposed expedient, England passed over in silence the answer transmitted to Lord Carysfort, at Berlin. She continued to treat the flags of the north in a hostile manner; and in a note transmitted by the Secretary of State, Lord Hawkesbury, to the Swedish Envoy, Baron Ehrenswärd, dated the 7th of March, at London, she has once more manifested those false principles which have been so often refuted:

Under these circumstances, the embargo on Swedish vessels can be considered in no other view than as an act of just and necessary precaution, which will not be revoked, so long as the Court of

¹*Collection of State Papers*, vol. 11, p. 243.

Stockholm continues to form a part of a confederacy, which has for its object, to impose by force on His Majesty a new system of maritime law, inconsistent with the dignity and independence of his Crown, and the rights and interests of his people.

A similar declaration was soon after sent to the Court of Denmark, adding, that she must abandon the coalition of the north, and enter into a separate negotiation with England. After receiving a negative answer, the English Chargé d'Affaires, Drummond, and the Plenipotentiary Extraordinary, Vansittart, left Copenhagen on the same day; and in the mean time the English fleet, under the orders of Admiral Sir Hyde Parker, destined for the Baltic Sea, had actually arrived on the coasts of Zealand.

It appears from all these events, that the Court of London has no inclination to desist from her inadmissible demands, and accept the proposed means of amicable conciliation. His Majesty the King of Prussia therefore feels himself compelled, in conformity to the obligations he has contracted, to take the most efficacious measures in support of the convention attacked, and to retaliate for the hostile proceedings against it: for this purpose, he will not only shut the mouths of the Elbe, and Weser, and the Ems, but likewise take possession of the States belonging to His Majesty the King of England, as Elector of Brunswick Lunenberg, situate in Germany.

His Majesty the King of Prussia accordingly demands and expects from the Electoral College of Privy Councilors at Hanover, and from the Board of Generals, that they will submit to this disposition without delay or reply; and that they will voluntarily obey the orders which shall be given relative to the occupation of the electorate by the Prussian troops, and likewise with respect to the electoral countries. His Majesty principally demands that the Hanoverian corps which has hitherto occupied part of the northern line of demarcation, shall be disarmed and be disbanded, with a proportional part of the other troops. His Majesty requires that the generals and other officers shall engage in writing, not to serve against His Majesty the King of Prussia; but, on the contrary, to follow strictly his orders until the present affair be brought to a conclusion. The troops which shall continue embodied, shall be cantoned, part on the right bank of the Leine, and part on the left bank of the Aller, and behind the Luhe as far as the Elbe, where they shall remain distributed among the towns of Hanover, Gifhorn, Belgen, Lunenberg, and the other smaller towns and villages of that

district. All the other places, including the fortress of Hameln, shall be delivered up to the Prussian troops, under the orders of Lieutenant General Klein.

His Majesty declares, at the same time, that the Prussian troops shall be subsisted at the expense of the electoral territory, commencing from the end of the month of April. His Majesty has sent his Cabinet Minister, Count Schullenburg to notify the present declaration to the Electoral College of Privy Councilors and commanders of troops. In these circumstances, all connection between the Electoral College and His Majesty the King of England will cease; and the authorities are, in consequence, responsible to His Majesty the King of Prussia for their administration and the revenues. In case, as it is to be hoped, of a voluntary submission, His Majesty is disposed, and ready to promise solemnly, as well to the nobility as to the burgesses and to all the inhabitants of the electorate, the complete enjoyment of tranquility, and the security of their property.

But, on the contrary, should the Government and the general officers attempt to impede the execution of the measures taken, and oppose the entrance of the Prussian troops, His Majesty would be obliged, though against his inclination, to revoke his promises, and to treat the electoral States in a hostile manner. The civil and military officers are therefore responsible for the fatal consequences which may in this case result from their conduct. For this reason His Majesty advises them to submit to this summons, and to prevent the rigorous measures which will inevitably be adopted in case of a refusal.

By order of His Majesty.

(Signed) HAUGWITZ

BERLIN, *March 30, 1801.*

**Instructions from the British Admiralty to Admiral Dickson,
April 3, 1801¹**

Whereas we transmitted to Lord Grenville late one of His Majesty's principal secretaries of state your letter to our secretary dated the

¹Thorvald Boye, *op. cit.*, p. 359.

16 of last month with letter which accompanied it from Captain John Hampstead commander of His Majesty's ship *Squirrel* representing that in pursuance of the orders he had received from you to proceed to the coast of Norway and knowing there were several vessels in the harbor of Oster Risoer he had entered the said harbor and on the next morning had brought away the Swedish vessels named in the margin; and whereas Lord Hawkesbury (who hath succeeded his Lordship) hath by his letter of the 27 instant signified to us His Majesty's pleasure that the four ships and vessels above mentioned belonging to the subjects of His Swedish Majesty should be immediately released and be allowed to return with their masters and crews to the ports from whence they were brought away and to furnish them with the necessary passports for that purpose and also to signify to Captain Hampstead His Majesty's disapprobation of his proceedings on that occasion in the strongest terms.

Given the 3 April, 1801.

W. ELIOT
I. IRONBRIDGE
J. MARKHAM

To

ARCHIBALD DICKSON, ESQ.,
Admiral of the Blue No. Yarmouth.

**Convention of June 17, 1801, between Great Britain and Russia
relative to Neutral Trade and Additional Articles of October
20, 1801¹**

In the Name of the Most Holy and Undivided Trinity:

The mutual desire of His Majesty the King of the United Kingdom of Great Britain and Ireland, and of His Majesty the Emperor of all the Russias, being not only to come to an understanding between themselves with respect to the differences which have lately interrupted the good understanding and friendly relations which subsisted

¹Translation. *British and Foreign State Papers*, vol. 1, pt. 1, p. 405.

between the two States; but also to prevent, by frank and precise explanations upon the navigation of their respective subjects, the renewal of similar altercations and troubles which might be the consequence of them; and the common object of the solicitude of Their said Majesties being to settle, as soon as can be done, an equitable arrangement of those differences, and an invariable determination of their principles upon the rights of neutrality, in their application to their respective monarchies, in order to unite more closely the ties of friendship and good intercourse, of which they acknowledge the utility and the benefits, have named and chosen for their plenipotentiaries, viz.:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, His said Majesty's Privy Counsellor and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the Emperor of all the Russias, Sieur Nikita Count de Panin, his Privy Counsellor, Minister of State for the Department of Foreign Affairs, present Chamberlain, Knight Grand Cross of the Order of St. Alexander Newsky, and of St. Anne of the First Class, of that of St. Ferdinand, and of Merit, of the Red Eagle, and of St. Lazarus; who, after having communicated their respective full powers, and found them in good and due form, have agreed upon the following points and articles:

ARTICLE 1

There shall be hereafter between His Britannic Majesty and His Imperial Majesty of all the Russias, their subjects, the states and countries under their dominion, good and unalterable friendship and understanding, and all the political, commercial, and other relations of common utility between the respective subjects, shall subsist as formerly, without their being disturbed or troubled in any manner whatever.

ARTICLE 2

His Britannic Majesty and the Emperor of all the Russias declare, that they will watch over the most rigorous execution of the prohibitions against the trade of contraband of their subjects with the enemies of either of the two high contracting Parties.

ARTICLE 3

His Britannic Majesty and His Imperial Majesty of all the Russias, having resolved to place under a sufficient safeguard the freedom of commerce and navigation of their subjects, in case one of them shall be at war, whilst the other shall be neuter, have agreed:

1. That the ships of the neutral Power may navigate freely to the ports, and upon the coasts of the nations at war.

2. That the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property; and it is agreed not to comprise under the denomination of the latter, the merchandise of the produce, growth, or manufacture of the countries at war, which should have been acquired by the subjects of the neutral Power, and should be transported for their account, which merchandise can not be excepted in any case from the freedom granted to the flag of the said Power.

3. That in order to avoid all equivocation and misunderstanding of what ought to be considered as contraband of war, His Britannic Majesty and His Imperial Majesty of all the Russias declare, conformably to Article 11 of the treaty of commerce concluded between the two Crowns, on the 10th (21st) February, 1797, that they acknowledge as such the following articles only, viz.: cannons, mortars, fire-arms, pistols, bombs, grenades, balls, bullets, firelocks, flints, matches, gunpowder, saltpetre, sulphur, cuirasses, pikes, swords, sword-belts, knapsacks, saddles and bridles, excepting, however, the quantity of the said articles which may be necessary for the defense of the ship, and those who compose the crew; and all other articles whatever not enumerated here shall not be reputed warlike and naval stores, nor be subject to confiscation, and of course shall pass freely, without being subjected to the smallest difficulty, unless they be considered enemy's property in the sense above specified. It is also agreed, that that which is stipulated in the present article shall not be prejudicial to the particular stipulations of one or the other Crown with other Powers, by which articles of a similar kind should be reserved, prohibited, or permitted.

4. That in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the dispositions of the Power which attacks it with ships, stationary or sufficiently near, an evident danger in entering.

5. That the ships of the neutral power shall not be stopped but upon just causes and evident facts: that they be tried without delay, and that the proceeding be always uniform, prompt, and legal.

In order the better to ensure the respect due to these stipulations, dictated by the sincere desire of conciliating every interest, and to give a new proof of their uprightness and love of justice, the high contracting Parties enter here into the most formal engagement to renew the severest prohibitions to their captains, whether of ships of war or merchantmen, to take, keep or conceal, on board their ships, any of the articles which, in the terms of the present convention, may be reputed contraband, and respectively to take care of the execution of the orders which they shall have published in their admiralities, and wherever it shall be necessary.

ARTICLE 4

The two high contracting Parties, wishing also to prevent all subject of dissension in future, by limiting the right of search of merchant ships going under convoy, to those cases only, in which the belligerent Power might experience a real prejudice by the abuse of the neutral flag, have agreed:

1. That the right of searching merchant ships belonging to the subjects of one of the contracting Powers, and navigating under convoy of a ship of war of the said Power, shall only be exercised by ships of war of the belligerent Party, and shall never extend to letters-of-marque, privateers, or other vessels, which do not belong to the royal or imperial fleet of Their Majesties, but which their subjects shall have fitted out for war.

2. That the proprietors of all merchant ships belonging to the subjects of one of the contracting Sovereigns, which shall be destined to sail under convoy of a ship of war, shall be required, before they receive their sailing orders, to produce to the commander of the convoy, their passports and certificates, or sea letters, in the form annexed to the present treaty.

3. That when such ship of war, having under convoy merchant ships, shall be met with by a ship or ships of war of the other contracting Party, who shall then be in a state of war, in order to avoid all disorder, they shall keep out of cannon shot, unless the state of the sea, or the place of meeting, render a nearer approach necessary; and

the commander of the ship of the belligerent Power shall send a boat on board the convoy, where they shall proceed reciprocally to the verification of the papers and certificates that are to prove on one part, that the ship of war is authorized to take under its escort such or such merchant ships of its nation, laden with such a cargo, and for such a port; on the other part, that the ship of war of the belligerent Party belongs to the royal or imperial fleet of Their Majesties.

4. This verification made, no search shall take place, if the papers are found in form, and if there exists no good motive for suspicion. In the contrary case, the commander of the neutral ship of war (being duly required thereto by the commander of the ship or ships of war of the belligerent Power) is to bring to and detain his convoy during the time necessary for the search of the ships which compose it, and he shall have the faculty of naming and delegating one or more officers to assist at the search of the said ships, which shall be done in his presence, on board each merchant ship, conjointly with one or more officers appointed by the commander of the ship of the belligerent Party.

5. If it happen that the commander of the ship or ships of the Power at war, having examined the papers found on board, and having interrogated the master and crew of the ship, shall see just and sufficient reason to detain the merchant ship in order to proceed to an ulterior search, he shall notify such intention to the commander of the convoy, who shall have the power to order an officer to remain on board the ship thus detained, and to assist at the examination of the cause of her detention. The merchant ship shall be carried immediately to the nearest and most convenient port belonging to the belligerent Power, and the ulterior search shall be carried on with all possible diligence.

ARTICLE 5

It is in like manner agreed, that if any merchant ship thus convoyed should be detained without just and sufficient cause, the commander of the ship or ships of war of the belligerent Power shall not only be bound to make to the owners of the ship and of the cargo, a full and perfect compensation for all the losses, expenses, damages, and costs, occasioned by such a detention, but shall moreover undergo an ulterior punishment for every act of violence, or other fault which he may have committed, according as the nature of the case may require. On

the other hand the convoying ship shall not be permitted, under any pretext whatsoever, to resist by force the detention of the merchant ship or ships by the ship or ships of war of the belligerent Power; an obligation to which the commander of a ship of war with convoy is not bound to observe towards letters of marque and privateers.

ARTICLE 6

The high contracting Parties shall give precise and efficacious orders, that the judgments upon prizes made at sea shall be conformable with the rules of the most exact justice and equity; that they shall be given by judges above suspicion, and who shall not be interested in the affair in question. The government of the respective States shall take care that the said decisions shall be speedily and duly executed, according to the forms prescribed. And in case of an unfounded detention, or other contravention to the regulations stipulated by the present article, the owners of such ship and cargo shall be allowed damages proportioned to the loss occasioned thereby. The rules to observe for these damages, and for the case of unfounded detention, as also the principles to follow for the purpose of accelerating the process, shall be the matter of additional articles, which the contracting Parties agree to settle between them, and which shall have the same force and validity as if they were inserted in the present act. For this effect, Their Britannic and Imperial Majesties mutually engage to put their hand to the salutary work, which may serve for the completion of these stipulations, and to communicate to each other, without delay, the views which may be suggested to them by their equal solicitude to prevent the least grounds for dispute in future.

ARTICLE 7

To obviate all the inconveniences which may arise from the bad faith of those who avail themselves of the flag of a nation without belonging to it, it is agreed to establish for an inviolable rule, that any vessel whatever, in order to be considered as the property of the country, the flag of which it carries, must have on board the captain of the ship, and one-half of the crew of the people of that country, and the papers and passports in due and perfect form; but every vessel which shall not observe this rule, and which shall infringe the ordinances published on that head, shall lose all rights to the protection of the contracting Powers.

ARTICLE 8

The principles and measures adopted by the present act shall be alike applicable to all the maritime wars in which one of the two Powers may be engaged, whilst the other remains neutral. These stipulations shall in consequence be regarded as permanent, and shall serve for a constant rule to the contracting Powers in matters of commerce and navigation.

ARTICLE 9

His Majesty the King of Denmark, and His Majesty the King of Sweden, shall be immediately invited by His Imperial Majesty, in the name of the two contracting Parties, to accede to the present convention, and at the same time to renew and confirm their respective treaties of commerce with His Britannic Majesty; and His said Majesty engages, by acts which shall have established that agreement, to render and restore to each of these Powers, all the Prizes that have been taken from them, as well as the territories and countries under their Dominion, which have been conquered by the arms of His Britannic Majesty since the rupture, in the state in which those possessions were found at the period at which the troops of His Britannic Majesty entered them. The orders of His said Majesty for the restitution of those prizes and conquests shall be immediately expedited after the exchange of the ratifications of the acts by which Sweden and Denmark, shall accede to the present treaty.

ARTICLE 10

The present convention shall be ratified by the two contracting Parties, and the ratifications exchanged at St. Petersburg in the space of two months at furthest from the day of the signature.

In faith of which, the respective plenipotentiaries have caused to be made two copies thereof, perfectly similar, signed with their hands, and have caused the seal of their arms to be affixed thereto.

Done at St. Petersburg, the 5/17 June, 1801.

(L. S.) ST. HELENS

(L. S.) N. CTE. DE PANIN

Formula of the passports and sea letters which are to be delivered, in the respective admiralties of the States of the two high contracting Parties, to the ships and vessels which shall sail from them conformable to Article 4 of the present treaty

Be it known that we have given leave and permission to N——, of the city or place of N——, master and conductor of the ship N——, belonging to N——, of the port of N——, of ——— tons or thereabouts, now lying in the port or harbor of N——, to sail from thence to N——, laden with N——, on account of N——, after the said ship shall have been visited before its departure in the usual manner by the officers appointed for that purpose; and the said N——, or such other as shall be vested with Powers to replace him, shall be obliged to produce in every port or harbor which he shall enter with the said vessel to the officers of the place, the present licence, and to carry the flag of N——, during his voyage.

In faith of which, etc.

Additional Articles, signed at Moscow, the 20th October, 1801

Whereas by the 7th article of the convention concluded the 5/17th June, 1801, between His Britannic Majesty and His Imperial Majesty of all the Russias, it was stipulated that the two high contracting Parties should mutually agree on some additional articles, which should fix the regulations and principles to be observed, as well for accelerating the judicial proceedings upon captures made at sea, as for the damages which should be allowed to the owners of neutral ships and cargoes, in cases of unfounded detention, Their said Majesties have named and authorized for this purpose, namely:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, a Peer of the said United Kingdom, one of His said Majesty's Most Honorable Privy Council, and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the Emperor of all the Russias, the Sieur Alexander, Prince de Kourakin, his Vice Chancellor, Actual Privy Counselor, Minister of the Council of State, Actual Chamberlain, Grand Chancellor of the Sovereign Order of St. John of Jerusalem, and Knight of the Russian Orders of St. Andrew, of St. Alexander Newsky, and of St. Anne of the First Class; of those of Prussia, of the Black and Red Eagles; of those of Denmark, of the Dannebrog, and of the Perfect Union; and Grand

Cross of the Sovereign Order of St. John of Jerusalem; and the Sieur Victor Count de Kotschoubey, his Actual Privy Counselor Minister for the Department for Foreign Affairs, Senator, Actual Chamberlain, and Knight of the Orders of St. Alexander Newsky, of St. Vladimir of the Second Class; and Commander of the Sovereign Order of St. John of Jerusalem: who, in virtue of their respective full powers, have agreed upon the following articles:

ARTICLE 1

In case of unfounded detention or other contravention of the established regulations, the owners of the vessel and cargo so detained shall be allowed compensation for each day's demurrage, proportionate to the loss they shall have sustained, according to the freight of the said ship, and the nature of its cargo.

ARTICLE 2

If the Ministers of one of the high contracting Parties, or any other persons accredited by the same to the belligerent Power, should remonstrate against the sentence which shall have been passed by the respective courts of admiralty upon the said captures, appeal shall be made in Russia, to the directing Senate, and in Great Britain, to His Majesty's Privy Council.

ARTICLE 3

Care shall be taken, on both sides, scrupulously to examine whether the regulations and precautions agreed upon in the present convention have been observed, which shall be done with all possible dispatch. The two high contracting Parties moreover mutually engage to adopt the most efficacious measures, in order to prevent the sentences of their several tribunals, respecting captures made at sea, being subject to any unnecessary delay.

ARTICLE 4

The goods in litigation can not be sold or unloaded before final judgment without an urgent and real necessity, which shall have been proved before the court of admiralty, and by virtue of a commission to this effect; and the captors shall by no means be permitted to remove or take away, on their own authority, either openly or clandestinely, any thing from a vessel so detained.

These additional articles, making part of the convention signed the 5/17 June, 1801, in the names of Their Britannic and Imperial Majesties, shall have the same force and validity as if they were inserted word for word in the said convention.

In witness whereof, we the undersigned, furnished with the full powers of Their said Majesties, have signed in their names the present additional articles, and have affixed the seal of our arms thereto.

Done at Moscow the 8/20 October, 1801.

(L. S.) ST. HELENS

(L. S.) LE PRINCE DE KOURAKIN

(L. S.) LE COMTE DE KOTSCHOUBEY

**Act of Accession of His Majesty the King of Denmark and Norway
to the Convention between Great Britain and Russia, October
23, 1801¹**

In the Name of the Most Holy and Undivided Trinity:

His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, having, in pursuance of their mutual desire to terminate, in the most equitable manner, the differences which had arisen between them, as well as between Great Britain and the other maritime Powers of the north, respecting the navigation of their respective subjects, concluded a convention, signed by their plenipotentiaries at St. Petersburg, the 5/17 June, of the present year; and their common solicitude extending itself not only to prevent similar altercations in future, and the troubles which might result therefrom, by establishing and applying the principles and rights of neutrality in their respective monarchies, but also to render this system common and equally advantageous to the maritime Powers of the north; it was stipulated by Article 9 of the said convention, that His Danish Majesty should be invited by His Majesty the Emperor of all the Russias, in the name of the high contracting Parties, to accede to the said convention; and His Majesty the King of Denmark and Norway, animated with the same senti-

¹Translation. *British and Foreign State Papers*, vol. 1, pt. 1, p. 402.

ments of conciliation and peace, and desirous of removing everything which has interrupted, or might hereafter interrupt, the good understanding between Their Britannic and Danish Majesties, and to reestablish fully, on its former footing, the ancient harmony and state of things, such as they existed by His Danish Majesty's treaties and conventions with Great Britain, His said Majesty has not hesitated to listen to the invitation made to him to accede to the said convention signed at St. Petersburg, the 5/17 June last.

To effect this salutary purpose, and to give to this act of accession, and to the acceptance of His Britannic Majesty, every possible authenticity, and every accustomed solemnity, Their said Majesties have named for their plenipotentiaries, viz.: His Majesty the King of the United Kingdom of Great Britain and Ireland, Alleyne Lord Baron St. Helens, a Peer of the said United Kingdom, one of His said Majesty's Most Honorable Privy Council, and his Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of all the Russias; and His Majesty the King of Denmark and Norway, the Sieur Francis Xavier Joseph Count de Danneskiöld Löwöndal, Count of the Holy Roman Empire, Knight of the Order of St. John of Jerusalem, Major General in the service of His Danish Majesty, Commander of his Marine Forces, and his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the Emperor of all the Russias;

Who, after having reciprocally exchanged their full powers, found to be in good and due form, have concluded and agreed, that all the Articles of the Convention concluded between His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of all the Russias, the 5/17th June of the present year, as well as the separate articles annexed thereto,¹ and the additional ones concluded the 8/20th October, 1801, by the plenipotentiaries of Their said Majesties, in all the clauses, conditions, and obligations, are to be considered as having been agreed upon, done and concluded, word for word, by Their Britannic and Danish Majesties themselves, in quality of principal contracting Parties, save and except the differences which result from the nature of the treaties and engagements antecedently subsisting between England and Denmark, of which the continuance and renewal are secured by the aforesaid

¹Relating to sequestrations, armistice, etc.

convention; and with the express stipulation on the part of the high contracting and acceding Parties, that the stipulation of the 2d article of the additional articles, signed at Moscow, the 8/20th October, 1801, by the plenipotentiaries of Their Britannic and Imperial Majesties, which fixes that the adjudication of causes in litigation shall, in the last resort, be carried by appeal, in Russia, before the Directing Senate, and in Great Britain before His Majesty's Privy Council, is to be understood, as, with regard to Denmark, that the said adjudications shall be there carried by appeal before the supreme tribunal of that kingdom.

In order to prevent any inaccuracy, it has been agreed that the said convention, signed the 5/17th June, the separate article annexed thereto, and the additional ones concluded the 8/20th, October, 1801, should be inserted here, word for word, as follows:

[Here follow the convention and additional articles.]

In consequence of all which His Majesty the King of Denmark accedes, by virtue of the present act, to the said convention, and to the said separate and additional articles, such as they are hereinbefore transcribed, without any exception or reserve, declaring and promising to fulfil all the clauses, conditions, and obligations thereof, as far as regards himself; and His Majesty the King of the United Kingdom of Great Britain and Ireland accepts the present accession of His Danish Majesty, and in like manner promises, on his part, to fulfil all the articles, clauses, and conditions, contained in the said convention, and the separate and additional articles hereinbefore inserted, without any exception or reserve.

The ratifications of the present act of accession and acceptance shall be exchanged in the space of two months, or sooner if possible; and the stipulations of the said convention shall, at the same time, be carried into execution as speedily as possible, regard being had to the full and entire reestablishment of the state of things, such as it was before the period of the misunderstandings, which are now so happily terminated.

In witness whereof, we the undersigned, by virtue of our full powers, have signed the present act, and have hereunto affixed the seal of our arms.

Done at Moscow, the 11/23 October, 1801.

(L. S.) ST. HELENS

(L. S.) F. X. J. COMTE DE DANNESKIOLD LOWENDAL

Ordinance of the King of Denmark regulating the Conduct and defining the Obligations of the Merchants and Mariners of His States in Time of War between Other Maritime Powers, May 4, 1803¹

We, Christian VII, by the grace of God King of Denmark and Norway, etc., to all whom it may concern.

Although the rules, by which merchants and seamen who are our subjects must be governed in time of war between other maritime Powers, have been laid down in a number of our previous ordinances, we nevertheless deem it necessary, in present circumstances, to set forth in a single ordinance the contents of these regulations, modified in several respects and in the form in which they must henceforth serve as the rule, in order that the greatest possible publicity may be given by these presents to the invariable principles, according to which we intend to maintain at all times the rights of the merchants and seamen of our States, and that no one may allege ignorance of the duties which he must fulfil, as a Danish subject, in a similar case. Therefore, it is our royal will that the following regulations be scrupulously observed, as the only rule of conduct, by all those who may wish to participate in the advantages which the neutrality of our flag in time of war assures to the legitimate commerce and navigation of our subjects. For these reasons, revoking by these presents our former ordinances with regard to the conduct of our subjects during a foreign naval war, we order and publish the following:

ARTICLE 1

Any merchant or navigator of our States who may wish to send a vessel belonging to him to any foreign port or place, to which the effects of a war that has broken out between other maritime Powers may extend, shall be required to secure a royal passport in Latin and such other papers and documents as are necessary for the legitimate sailing of a ship. To this end, our subjects are notified at the beginning of such a war, for what foreign ports or places it has been deemed necessary that they be provided with our royal passport in Latin.

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 93.

ARTICLE 2

Such passport may not be delivered to the owner of the vessel until he shall have obtained a certificate vouching for his ownership.

ARTICLE 3

To obtain the certificate required by the foregoing article, he must be our subject, born in our States, or he must have acquired, before the outbreak of hostilities between any maritime Powers of Europe, complete enjoyment of all the rights of a domiciled subject, either of our countries or of some other neutral State. The owner of the vessel, for which the certificate is requested, must, in any event, reside in some part of our kingdoms or of the countries belonging to us.

ARTICLE 4

To procure the above-mentioned certificate, it is necessary to appear before the magistrate of the city or maritime locality from which the ship sails, or else the place of residence of the majority of the owners: all of the latter shall be required personally to certify, either by oral oath, or by formal oath in writing signed by their own hands, or else the principal owner, in the name of all, that the vessel really belongs to them, all being our subjects, and that it has not on board any contraband of war for the account of the belligerent Powers or any of their subjects.

ARTICLE 5

During the course of a foreign naval war, no one, who was born a subject of any of the Powers engaged therein, may be the captain of a merchant ship sailing under our royal passport, unless he proves that he acquired citizenship in our kingdoms or countries before the outbreak of hostilities.

ARTICLE 6

Every merchant captain, who wishes to be admitted to the command of a vessel provided with our royal passport, must have acquired citizenship in some part of our States. His citizenship papers must always be on board his vessel before its departure from the port where the passport is issued; he shall be required to make oath, in the

prescribed form, that no act shall, with his knowledge or consent, be committed or attempted, with regard to the said vessel, which might involve abuse of the passports and certificates issued to him. The oath shall be sent to the competent department with the application for the passport. But in case this can not be done because of the absence of the captain, the owner of the vessel shall be required to give notice thereof to the said department, and our consul or commercial agent in the district where the captain happens to be shall see to it, on his responsibility, that he makes the prescribed oath.

ARTICLE 7

There must not be on board vessels provided with the above-prescribed passport any supercargo, clerk, or other ship's officer who is the subject of a Power at war.

ARTICLE 8

Half of the crews of the vessels above specified, including the boat-swains and boatswains' mates, shall consist of natives of this country. If the crew of a vessel should become depleted in a foreign country through desertion, death, or sickness, and if the captain should find it impossible to comply with the aforesaid rule, he shall be allowed to engage as many foreign subjects, preferably subjects of neutral countries, as he may need to continue his voyage; provided, nevertheless, that the subjects of a Power at war, on board his ship, shall in no case constitute more than one third of the entire crew. Whenever a change is made in his crew, the captain must make entry thereof, with a statement of the causes which rendered it necessary, in the vessel's muster roll, which muster roll shall be duly attested by the consul or commercial agent, or his deputy, in the first port touched by the vessel, in order that this attestation may serve as the captain's authority wherever there may be need.

ARTICLE 9

The papers and documents specified below must always be on board vessels provided with our royal passport, to wit: the certificate prescribed by Article 2.

Its construction papers, and if the vessel was not built for the present proprietor, the contract of sale or the purchase documents shall

be attached thereto. The former of these two instruments and the latter, if there be occasion, shall accompany the application of the owner for a passport.

The royal passport in Latin, with the translations thereto appertaining.

Its measurement certificate.

The muster roll of the crew, duly verified by the competent officers.

The charter-parties and bills of lading covering the cargo, and finally, the attestation of the custom house of the locality where the cargo has been loaded.

ARTICLE 10

The measurement certificate shall be issued by the officers appointed for this purpose in the maritime localities of our kingdoms and countries. In case one of our subjects shall have bought a vessel in some foreign port, our consul or commercial agent on the spot, shall be authorized to attend to the measurement and to issue to the captain a provisional measurement certificate, which shall be considered valid until the vessel reaches some port of our States, where it shall be measured and marked in due form. whereupon a measurement certificate in the regular form shall be issued, which thereafter shall form a part of the sailing papers of the vessel.

ARTICLE 11

A ship-owner is forbidden to secure and a captain to have on board false sailing papers; the ship shall not fly a foreign flag while on a voyage under papers and instruments issued by us.

ARTICLE 12

Our royal passport is valid for only one voyage; that is to say, from the time that the vessel, after having secured it, sails from the port where it was issued until its return to the same port, it being understood that in the meantime it shall not have changed hands, in which case the new owner shall be required to procure, in his own name, the necessary papers and documents.

ARTICLE 13

Since according to the generally established principles the subjects of a neutral Power can not be permitted to transport in their vessels

goods that would be considered contraband of war, if they were destined for the ports of a belligerent Power or if they belonged to its subjects, we have deemed it advisable to define expressly what shall be included under the head of contraband of war, in order to prevent the abuse of our flag in covering the transportation of prohibited articles and so that no one may allege ignorance on this score. Therefore, we declare that the articles and merchandise hereinafter specified shall be considered contraband of war: cannons, mortars, arms of all kinds, pistols, bombs, grenades, bullets, balls, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles, with the exception, however, of such quantity as may be necessary for the defense of the vessel and of those composing its crew.

Moreover, the positive agreements contracted with foreign Powers respecting merchandise and property, the transportation of which in time of war is prohibited by the said agreements, shall remain in force, and to this end special regulations shall be drawn up, to be delivered to every ship owner when he receives our royal passport.

ARTICLE 14

In case a vessel bound for a neutral port should ship as cargo goods that would be contraband of war, if they were destined for a port belonging to some belligerent Power, it shall not be sufficient for the owner and the captain to make oath as prescribed above, but the owner and the captain shall be further required to make conjointly a declaration different from the general customs declaration, in which shall be specified the kind, the quantity, and the price of these goods. This declaration shall be verified by the customs officers at the place from which the vessel sails; after which the customs officer having jurisdiction shall forward it immediately to the general custom house, to be used in checking and verifying the arrival of the goods therein specified at their place of destination therein set forth, unless their arrival should be prevented by capture or forcible detention, whereof satisfactory proof must be furnished. This checking up shall be effected in the following manner:

The shipper of such goods must furnish a certificate in writing from our consul or commercial agent, or of their deputy, at the place for which the vessel is bound, or in their default, from the competent

magistrate or some other person publicly authorized and qualified for this purpose; which certificate shall state the arrival of the vessel and the discharge of its cargo in conformity with the aforesaid declaration, and shall be the legal evidence thereof. This certificate shall be sent to our General Bureau of Economics and Commerce as soon as the vessel shall have reached the port for which it was bound, or else after its return to one of the ports of our kingdoms. In case this certificate is not transmitted within a period proportionate to the length of the voyage, our General Bureau of Economics and Commerce shall require the owner of the vessel to make a declaration, such as he shall be willing to swear to, to the effect that he has received no news of the vessel or of the goods. If the arrival of the vessel and the discharge of the goods above specified in a neutral port can not be proved, and if a capture at sea or some other unfortunate event is not the cause thereof, the owner shall pay into the treasury of our General Bureau of Economics and Commerce a fine of twenty rigsdalers for every last of goods carried by the vessel; and both the owner and the captain shall, in addition, be liable to prosecution under the fiscal laws.

ARTICLE 15

All captains of vessels are forbidden to sail for a port blockaded by sea by one of the Powers at war; they must conform strictly to the instructions given them by the competent magistrates with regard to the blockade of such a port. In case a captain, desiring to enter a port of the blockade of which he is unaware, encounters a ship of the line flying the flag of one of the Powers at war, whose commander notifies him that this port is actually blockaded, he shall be required to withdraw forthwith and shall not attempt in any way to enter it as long as the blockade is not raised.

ARTICLE 16

None of our subjects shall be permitted to enter the service of any corsair or privateer of a country at war, nor himself to arm vessels for such a purpose, nor to have a share or interest in such vessels. No ship-owner or captain shall permit the use of his ship for the transportation of troops of munitions of war of any kind whatsoever. In case a captain is unable to prevent, because of the superiority of the force used against him, the use of his vessel for such a purpose, he

shall be required to make formal protest in a properly attested instrument against the act of violence which it was not in his power to escape.

ARTICLE 17

When a vessel that is not under military convoy shall be hailed at sea by an armed ship belonging to one of the belligerent Powers, which is authorized to inspect the sailing papers on board merchant ships, the captain shall offer no resistance to such examination, if the captain of the armed ship states it to be his intention to make it; but he shall be required to show in good faith and without concealment all the papers and documents pertaining to his vessel and to its cargo.

The captain of the vessel, as well as its officers and crew, is likewise forbidden, under severe penalties, to throw overboard, to destroy, or to hold back any of the documents forming part of the papers relating to the vessel and its cargo, either before the visit or while it is in progress. In case we shall have granted armed protection to the commerce under our flag, then merchant captains, who may desire to be received under convoy, shall be required first to show their sailing papers to the commander of the convoy and to be governed by his orders in every particular.

ARTICLE 18

Any owner or captain who shall contravene, wholly or partially, the articles and rules of this ordinance, shall forfeit his citizenship and his right to engage in maritime commerce, and shall, furthermore, be liable to prosecution under the fiscal laws, and shall be punished, according to the seriousness of the offense, either as a perjurer or as a violator of royal ordinances. On the other hand, it is our intention to protect and to maintain the rights of all our dear and faithful subjects who shall strictly conform to the above-mentioned rules in their legitimate commerce and navigation. Therefore, we have ordered all our Ministers, consuls, and other agents in foreign countries, to be most active in their efforts to prevent our said subjects from being vexed or molested, and, if they should be, to help them to obtain justice and redress of their grievances. We promise, furthermore, to support all well-founded claims which they may have occasion humbly to lay before us.

Given at COPENHAGEN, *May 4, 1803.*

Under our hand and seal.

CHRISTIAN R.

**Declaration of Neutrality of the Republic of the Seven Islands,
June, 1803¹**

The Republic of the Seven Islands, having no concern whatever in the matters in dispute between the two Powers, whose good-will and friendship it appreciates, is pleased to see in its midst the public agents of both and shall not cease to show them proper deference and regard. It deems it to be its duty to declare hereby to all Europe, to all the Powers its friends, and particularly to France and England, that it will observe the strictest neutrality, in conformity with the principles of the law of nations, convinced, as it is, that the last two States will observe the same impartiality with respect to it and will not permit the slightest violation of its neutrality, either in the matter of its political and territorial rights, or in the matter of its commercial relations and the property of its subjects. The Government of these Islands therefore orders its inhabitants to have every regard and sentiments of affection and mutual consideration for all the war and merchant ships and all individuals of the two belligerent nations. It enjoins especially, holding them to the strictest accountability, all the civil and military employees of this Republic not to permit in any way that any injury, on any pretext whatever, be done to any individual who is a subject of either of the two belligerent Powers; for the Government of the Seven Islands desires to remain constantly on the best of terms with them, and to maintain with them relations of friendship and commerce.

**Decree of the Prince Regent of Portugal concerning the Observance
of Neutrality in His States, June 3, 1803²**

As it is always the object of my paternal wishes and of my royal sentiments to maintain intact the peaceful relations which happily exist between me and the Powers, my allies and friends; as to this end, in the present circumstances of Europe, it is advisable to define the principles which must serve as the basis of a system of absolute

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 102.

²Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 101.

neutrality, which it is my intention shall be religiously observed, if war should break out—which Heaven forbid!—among the Powers, my allies and friends; and considering how greatly it is to the interest of the welfare of mankind and to the tranquillity of my States and vassals to prevent the most trivial differences, which might result from ignorance of the ordinances issued to carry out the purpose which I have in mind:

I therefore declare “that the privateers of the belligerent Powers shall not be admitted to the ports of my States and dominions nor shall the prizes which may be taken, either by them or by vessels of the line, frigates or other war-ships, except only in cases where the law of nations declares hospitality to be absolutely necessary, and then only on condition that it be not permitted to sell the said prizes or their cargoes discharged in these ports, when there are prizes in such cases; nor may the vessels remain longer than is necessary to avoid danger or to receive the innocent assistance of which they may have need.”

Likewise the decree of August 30, 1780, in which the same thing is ordered, is renewed and is to be in full force.

The war council shall see to the execution of all these ordinances and shall issue the necessary orders to the governors and commanders of provinces, of fortresses, and of maritime localities.

QUELUS PALACE, *June 3, 1803.*

Proclamation of the Prince and President of the Senate of the Republic of the Seven Islands, containing Regulations governing the Conduct of His Subjects with regard to the Maintenance of Neutrality, July 9, 1803¹

On the first news of the renewal of the war between the two high Powers, England and France, the Government of the Seven United Islands hastened to manifest its sentiments of loyal friendship, devotion, and impartiality toward these Powers, by proclaiming to all Europe its absolute neutrality in the differences between the said belligerent Powers.

¹Translations. French text at Martens, *Recueil de Traités*, vol. 8, p. 103.

The Senate, now wishing to confirm still further the sincerity of the intentions of the Republic and the care it has taken to see that its subjects religiously observe this neutrality, has adopted the following provisions and orders the most exact and absolute execution thereof:

ARTICLE 1

It is expressly forbidden all subjects of the Republic to take the slightest part, direct or indirect, in the present war, either as sailors or soldiers, or in any other capacity, on the war-ships or privateers of either of the belligerent Powers, which may touch at the ports of the State or at any other place or foreign port.

ARTICLE 2

It is likewise forbidden captains and officers of our vessels to enter, on any pretext whatever, the service of either of the belligerent Powers, whether for transportation or for any other purpose; as well as to load their vessels with munitions of war or other contraband goods, to transport them to other vessels or to places or localities belonging to the said Powers, or to cities or ports which are under siege.

ARTICLE 3

Any person who shall act contrary to the provisions of the two foregoing articles shall incur capital punishment, and his property, both real and personal, present and future, shall be confiscated, and the proceeds thereof shall be turned into the public treasury.

ARTICLE 4

The present proclamation shall be printed in the two languages and published, with all due formalities, in all the cities, burghs, and villages of our Islands. Moreover, a printed copy shall be delivered by the respective governments to all the parish churches, with formal orders that they be read on the most solemn feast days, after divine service, and that they be public posted in the parish.

ARTICLE 5

In order that the present provisions may be absolutely carried out, several printed copies shall be transmitted to all the Ministers and

consuls of the Republic, with orders, under penalty of dismissal, to read them to the captains and crews of our national vessels, which may touch at the ports under their jurisdiction, and to prevent by their vigilance and authority any contravention of the rules laid down in Article 2.

ARTICLE 6

In case of any contravention, the said Ministers and consuls shall be required to arrest immediately the culprits and their vessels, and to send them under strong guard that they may be placed at the disposition of the Senate.

Given at the Senate House of CORFU, *July 9, 1803.*

(Signed) SPIRIDION GEORGE TETOCHI,
Prince and President.

Ordinance of Austria on the Observance of Neutrality, August 7, 1803¹

We, Francis II, etc., etc. Whereas we are determined to observe the strictest neutrality in the war which has broken out between France and England, and therefore that the relations of peace and friendship hitherto existing between us and each of the belligerent Powers may continue without interruption, it is necessary, in order to avoid any cause for complaint, that on the one hand this neutrality be observed by all our subjects, in particular by those engaged in navigation and maritime commerce, so far as it depends upon them, and that, on the other hand, the rights of our neutral coasts and localities be maintained, and also that commerce with each of the belligerent Powers, provided that it be carried on in accordance with the rules of neutrality, be duly ensured. For these reasons and to this end, as well as to prevent any misunderstanding or difficulty, which might result from ignorance or neglect of the said duties and rights, we publish by these presents the following provisions, which are founded in part on the rules laid down in existing treaties between the European Powers,

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 105.

and in part are in conformity with the practices followed among them by virtue of the law of nations, by which provisions our civil and military officers and all our subjects shall be guided during the present naval war.

ARTICLE 1

By these presents we forbid all our subjects and all the inhabitants of our country to enlist for duty on land or sea in the service of either of the belligerent Powers, in any rank whatever, or voluntarily to enter the military service of these Powers, under the penalties provided by the laws of our hereditary countries against illegal emigration.

ARTICLE 2

Our subjects shall also abstain, in all other respects, from taking part personally in the war or in the military armaments. In particular, they shall refrain from the arming of privateers for the belligerent Powers, and shall have no interest of any kind in such enterprises, when they are carried on outside of our territory.

ARTICLE 3

We likewise forbid all our subjects and all the inhabitants of our countries to construct, equip, or sell, in the ports, roadsteads, or on the coasts subject to our dominion, any war-ships or merchant ships, for use by the belligerent Powers, under penalty of a fine of 3,000 ducats for every violation of this prohibition. Half of this fine shall be paid to the informer and half to the treasury, and, in case the culprit is insolvent, shall be replaced by proportionate corporal punishment or imprisonment.

ARTICLE 4

Furthermore, Austrian navigators, because of the neutrality adopted, are forbidden to transport either marines or sailors, under the guise of passengers or otherwise, for service under any of the belligerent Powers, in particular also to lend their names to vessels or property of the nations at war, or, finally, to convey any cargoes or merchandise to localities or ports besieged or blockaded by either of the belligerent Powers, in which case they could not enjoy the freedom of neutral flags according to the established practice of nations, nor could they expect from us any protection or intercession.

ARTICLE 5

Austrian ships may not have on board naval officers of the belligerent Powers, or sailors belonging to those Powers, exceeding a third of the crew, since the vessel would otherwise not be considered neutral.

ARTICLE 6

In the just expectation that neutral Austrian commerce shall be duly respected by the belligerent Powers and that the rights which custom confers upon them shall be exercised by them with the ordinary modifications, required by the law of nations or by treaties, we order that Austrian navigators shall not resist visit on the high seas on the part of foreign war-ships, but that they shall show without throwing any difficulties in the way the papers and documents proving the neutrality of the vessel and its cargo, and shall not throw any of these instruments overboard or destroy them in any way; still less shall they be permitted to have false, misleading, or secret papers on board.

ARTICLE 7

With regard to neutral commerce and articles which are to be considered contraband during war, we, for our part, assume the same obligations as those contracted by the other neutral Powers, to wit, Russia, Sweden, and Denmark, in their last convention with England, of June 17, 1801. In return, we shall expect the belligerent Powers to observe toward us and the commerce of our subjects the same consideration and to respect the same rights, which these Powers and the other neutral States must enjoy for the same reason. Consequently, we forbid all our subjects, who are navigators and merchants, to transport, for the Powers now at war, any of the goods or munitions of war hereinafter designated, to wit: cannons, mortars, arquebuses, pistols, bombs, grenades, bullets, guns, gun-flints, fuses, powder, saltpeter, sulphur, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles. All these articles being generally regarded as contraband, only such quantities of them may be carried on neutral vessels as are necessary for their use and defense. Any of our subjects who, in spite of our prohibition, shall engage in this forbidden commerce, shall incur the penalty of their disobedience, and shall, moreover, be exposed to all the injuries that they may suffer through the capture and confiscation of their vessels by the belligerent Powers.

ARTICLE 8

With the exception of the articles designated in the preceding article, trade in merchandise, products, and wares shall be carried on without restriction with the belligerent Powers, provided the exportation of such goods from the hereditary countries is not prohibited, in general, by existing laws and regulations, or by laws or regulations that may hereafter be published. Nevertheless, all purchasing, storing, and transporting of articles of equipment and provisions for the fleets and armies at war, is forbidden. The vessels which shall enter the ports may only load such quantity as is necessary for their own use. For the rest, our subjects engaged in sea-going trade shall act with prudence, paying attention to everything that may be published on this subject by the belligerent Powers, and considering the unpleasant consequences that might result with regard to their commerce.

ARTICLE 9

As it is self-evident that, in order to avoid all difficulties on the high seas, neutral navigators must prove the neutrality of their vessel and its cargo, any of our subjects who may wish to put to sea from one of our ports and transport his cargo to distant ports, coasts, or countries, whether neutral or at war, must obtain from the nearest authority, or from the magistrate of the place, the necessary maritime passports, as well as customs certificates, charts, bills of lading, and the other customary documents, on which shall appear the name of the owner, the character and quantity of the cargo, the place of destination, and the consignee. We shall immediately publish special regulations on the form, the manner in which these passports shall be drawn up, and the precautionary measures necessary to prevent abuse thereof.

ARTICLE 10

Since Austrian vessels may, in spite of the present war, continue unrestrained their commerce and their business in the ports of the belligerent Powers, the war and merchant ships of these Powers may likewise freely enter, as before, all Austrian ports, remain there as long as they see fit, make repairs, etc., if they conform strictly to the rules and principles of neutrality. However, in order to observe on this point perfect equality with regard to war-ships and, so far as possible, to avoid all difficulties, we decree that, so long as the present

war lasts, no more than six war-ships of each of the belligerent Powers may enter our ports at one time.

ARTICLE 11

Since all vessels without exception must enjoy the protection which neutrality ensures, and absolute security in all the ports, roadsteads, and coasts subject to our dominion, it shall not be permissible for one or more vessels of the Powers at war to engage in hostilities in the said ports, nor within cannon-shot of the coasts, and consequently there shall be no fighting, pursuit, attack, visit, or seizure of ships in the said waters. Our authorities and particularly the military commanders in our seaports shall especially watch over these matters.

ARTICLE 12

By virtue of the rights proceeding from the said neutrality, it shall not be permissible for the vessels of the belligerent Powers to cruise off our ports within the distance mentioned in the foregoing article, lying in wait for ships entering or leaving; still less may they remain in the said ports for the purpose of sailing out to meet incoming vessels or of pursuing those that wish to put to sea.

ARTICLE 13

When privateers or armed merchant ships of the two belligerent Powers chance to be at the same time in one of our ports and one of them wishes to put to sea, the other may not leave within twenty-four hours, it being understood that the vessel which anchored in the port first has the right to put to sea before or after the other. War-ships or entire squadrons shall not, however, be subject to this twenty-four hour rule, provided their commanders give their word of honor to the governor or chief officer of the port that they will not pursue or molest during this period of time any vessel of the enemy. The word of honor shall be given once for all by commanders of fleets and squadrons; the captains of single vessels must renew their promise every time they wish to put to sea. As for captains of armed merchant ships or privateers, they may not leave the port within twenty-four hours, unless they give sufficient security for the fulfilment of their promise.

ARTICLE 14

Vessels of the belligerent Powers shall not be permitted to leave the port, when the arrival of a foreign vessel has been reported, unless, as provided in the preceding article, the commander of war-ships has given his word, or the merchants or privateers have furnished sufficient security, to abstain from any act of hostility against the said vessels.

ARTICLE 15

Small vessels, like tartans, trabacolos, feluccas, rowboats, etc., are excepted from this provision. Their crews and armaments being too insignificant to be able to commit any act of hostility, they may consequently leave the port whenever they see fit.

ARTICLE 16

The enlistment of sailors for service under the belligerent Powers is forbidden in our ports; and in case vessels belonging to these Powers shall have need of men to complete their crews, they shall be permitted to procure them, on condition, however, that they shall not engage any of our subjects or inhabitants of the country and that they shall not take by force the crew of any other vessel of the same belligerent Power, but that their crew shall be completed with individuals who shall enlist voluntarily.

ARTICLE 17

Prizes which the vessels of one of the belligerent Powers shall have taken from the other may be brought into all our ports, where there is a commander or governor, and specifically into the ports of Venice, Trieste, Fiume, Zeng, and Zara. Effects may be unloaded, stored, and guarded, provided they are not articles the importation of which into our countries is prohibited. They may be bought, sold, and again exported for sale elsewhere, on condition nevertheless that the competent courts of the Power making the prize shall have passed upon its legality. If, during this interval, certain effects might run the risk of being spoilt, they may be sold, on condition nevertheless that sufficient security be given to cover their value, in case the courts decide that the prize must be released.

ARTICLE 18

In case claims are made, which give grounds for the presumption that the prize was taken illegally and in contravention of the provisions of Articles 10, 11, 12, and 13 of this ordinance, our governors and presidents of regency, after having taken the necessary testimony, shall pass upon the case summarily and without appeal; and if it should actually happen that a vessel brought into one of our ports had been taken in violation of the laws of neutrality, such a prize shall be declared illegal by our officers and shall be restored to its owner.

ARTICLE 19

The belligerent Powers shall not be permitted to put ashore in our ports, roadsteads, or on our coasts any individual as a prisoner of war, for immediately on setting foot on the territory of a neutral sovereign, or one that is friendly to their Government, such prisoners must be regarded as free, and all the military and civil authorities must give them, as such, protection and assistance.

ARTICLE 20

In consequence of all these obligations which we have contracted and the measures taken for the protection of the vessels of belligerent Powers in our ports, we do not doubt that these Powers will respect with regard to us the rights that belong to a neutral State and which all the other nations enjoy. We expect them above all to give to the commanders of their fleets and to the captains of armed vessels and privateers orders not to molest on the high seas Austrian ships laden with non-prohibited goods, but to allow them to continue their course freely, if their papers and passports are in order, even though they may be bound for an enemy port. And, finally, that they shall render prompt and impartial justice to our navigators, who may have grievances against the commanders of their war-ships or privateers.

ARTICLE 21

The present regulations shall be published in the German and Italian languages in all our hereditary countries, and particularly in all our ports and countries near the coast, so that all our subjects who are navigators and merchants may conform hereto. Our civil and military

authorities must also be guided by the provisions hereof in cases which may arise, and must see that they are scrupulously executed.

Given *August 7, 1803*.

New Regulations of Sweden regarding the Commerce and Navigation with Foreign Maritime Powers in Time of War, January 21, 1804¹

We Gustavus Adolphus, by the grace of God King of Sweden, of the Goths and of the Vandals, etc., heir to Denmark and Norway, Duke of Schleswig-Holstein, etc., proclaim that, desiring to ensure to Swedish navigation, during the disturbances of the present war, all the security which the maintenance of the commercial relations of Sweden with other nations demands, and having recognized the necessity of the strictest observance, on the part of our faithful subjects who are merchants, of the obligations and precautions, which, by virtue of the formal treaties and conventions existing between us and other Powers, are required to ensure to the Swedish flag all the rights and prerogatives which it should enjoy as a neutral; and to avoid, on the other hand, everything that may in any way render it suspect to the Powers at war, and therefore expose it to insults, we have seen fit to have our regulations of December 23, 1800, revised, and to determine and prescribe with greater precision what rules must, in time of war between maritime Powers, necessarily be observed by Swedish navigators, if they desire to be respected in their voyages and to be considered, together with their ships and effects, as belonging to a neutral Power. With this view, we desire, by the present new ordinance on the same subject, to lay down and prescribe the following general rules:

SECTION 1

No vessel shall be recognized as Swedish, unless it has been built in Sweden or in some country under its rule, except in the case of a foreign vessel which, having been wrecked on the coast of Sweden,

¹Translation. French text at Martens, *Recueil de Traités*, vol. 8, p. 112.

has been bought, repaired, and equipped by Swedish subjects, or unless it shall have been formally naturalized, as purchased by a Swede in a foreign country. However, as to vessels which our subjects may have bought in the countries of the belligerent Powers and from their subjects, such vessels shall not be granted naturalization while the war lasts; but all such vessels as shall have obtained naturalization before the rupture shall be considered Swedish and neutral, from whatever place they may have come or to whomsoever they may have previously belonged.

SECTION 2

The documents which a merchant captain must have on board during a voyage, in order to prove that his vessel is Swedish, are, when he is to sail beyond the Baltic Sea and pass through the Sound, a construction certificate, a measurement certificate, a so-called *Turkish* passport issued by the Board of Commerce and a Latin translation thereof; an exemption certificate; a cargo certificate issued by the magistrate of the place; a passport for the crew; a copy of the oath of the owners; the charter party signed by the owner, the captain, and the shipper; a declaration of the cargo and of the freight likewise signed by the aforesaid persons; and, finally, a health certificate, when circumstances require it. When the vessel is not to sail beyond the Baltic, it shall not require this so-called *Turkish* passport with its Latin translation; but all the documents above specified must necessarily be carried on board when the vessel sails for a foreign land.

SECTION 3

The captain shall procure all the said documents in a Swedish port or a port belonging to Sweden; and they may not be issued to a vessel which is not in such a port, unless the vessel has, by chance or through an act of violence, lost its papers, in which case duplicates may be issued, provided the captain immediately on his arrival in port make a formal statement of such mishap, to which he shall make oath, if required.

SECTION 4

Captains are strictly forbidden to have misleading or false papers and bills of lading, or to fly a foreign flag on any occasion and on any pretext whatever.

SECTION 5

The captain and half the crew must be Swedish subjects, in order that the vessel and goods may be regarded as Swedish or neutral. But if it should happen during the stay of the vessel in a foreign country that the crew, through desertion, death, or sickness, should become so diminished that those left, that is to say, those remaining in good health, were not sufficient to man the ship, the captain shall be allowed to engage, with the knowledge of the Swedish commercial agent, as many foreign sailors, preferably subjects of neutral States, in excess of the prescribed number as he may need to continue his voyage. However, the number of subjects of the belligerent Powers on board the vessel shall never exceed one-third of the crew, the captain being required to enter every change of this kind and the causes thereof, on the muster-roll of the crew, and the genuineness of this entry must be attested by the Swedish commercial agent, or in case there is no such agent, by the magistrate, the notary public, or other person of like authority according to the practice of the country.

SECTION 6

Swedish vessels, as neutrals, may freely sail to the ports and along the coasts of the nations at war; and all goods on board neutral vessels shall be free, with the exception of contraband of war and enemy property. Therefore, all our subjects in general are forbidden, under the strictest accountability and inevitable penalties for violators, to engage in contraband trade with the subjects of any of the belligerent Powers; and it is likewise forbidden, under similar accountability and penalties, the commanders of our warships and the captains of Swedish merchant ships bound for a port belonging to or subject to either of the nations at war, to load, to have, or to conceal on board any contraband of war; and in order to avoid any ambiguity or misunderstanding as to what is properly to be considered contraband of this nature, we declare that nothing but the following goods shall be included under this head: cannons, mortars, firearms, pistols, bombs, grenades, bullets of all kinds, guns, gun-flints, fuses, powder, saltpeter, sulphur, breastplates, pikes, swords, sword-belts, cartridge-boxes, saddles and bridles, except such quantities of all these articles as may be necessary for the defense of the vessel and of its crew. All other articles whatsoever, not here specified, shall not be considered munitions of war or naval munitions,

nor shall they be subject to confiscation; and consequently, in so far as they can not be considered enemy property, they shall pass freely, and the vessel shall not be exposed to the slightest annoyance. Furthermore, articles of commerce, whether finished products or not, emanating from countries belonging to the belligerent Powers shall not be considered enemy property when they have been purchased by Swedish subjects and are carried for their account, which goods are not to be excepted from the exemption recognized to the Swedish flag as a neutral; but in the particular case of England in this war, our subjects who are engaged in navigation are required to conform to the provisions of the convention which was drawn up between us and the King of Great Britain and Ireland, under date of July 25, 1803, and ratified on August 25 and September 23 of the same year, for the purpose of elucidating Article 11 of the treaty of commerce concluded in 1661 between Sweden and England.

SECTION 7

It is forbidden any Swedish subject to arm vessels to be used for privateering against either of the belligerent Powers, their subjects, or their property. It is likewise forbidden any Swedish subject to enter the service of foreign privateers.

SECTION 8

It is furthermore forbidden any Swedish captain to allow himself, or the vessel he commands, to be employed to transport, for either of the belligerent Parties, troops or munitions of war as above specified, unless he is constrained to do so by force and formally protests against it.

SECTION 9

When a captain, who sails unescorted, is encountered on the high seas by any war-ship or privateer of either of the nations at war who may wish to visit his vessel, he must not refuse, nor must he attempt to escape such visit; but he is required to produce his papers frankly and without dissimulation, it being in such a case strictly forbidden the captain and the crew to abstract any documents relating to the vessel and its cargo, still more to throw any of their papers overboard when the vessel is being hailed or visited.

SECTION 10

The right to visit Swedish merchant ships under convoy may be exercised only by the war-ships of the belligerent Powers, and does not extend to privateers, which do not belong to the fleets of the said Powers but have been armed by their subjects; merchant captains being required above all to be very careful to follow the orders and signals of the commander of the convoy, and to deviate therefrom as little as possible. It is, moreover, necessary that the owners of merchant ships intending to sail under convoy show their passports, certificates or sailing papers to the commander of the escorting ship, in order to receive the instructions that are to be given them as to their course.

SECTION 11

No merchant ship shall attempt to enter a blockaded port, after it has been formally notified of the state of such port by the officer commanding the blockading fleet; and to determine what constitutes a blockaded port, none shall be considered such except a port which has been so closed by a certain number of enemy war-ships stationed sufficiently near to render access thereto clearly dangerous.

SECTION 12

A captain who scrupulously observes all the rules above prescribed, shall, according to treaties and the law of nations, enjoy free and unrestricted navigation; and if, notwithstanding, he is molested or suffers injury, he has a right to expect the most energetic support on the part of our Ministers and commercial agents residing in foreign countries in all just claims which he shall make to secure reparation and indemnification. On the other hand, a captain who neglects and fails to observe the orders given him as to his course has only himself to blame for the mishaps which may result from such neglect, and must not look for our high support and gracious protection.

SECTION 13

In case a Swedish vessel should be seized, its captain must deliver to the commercial agent or vice-agent of Sweden, if there is one in the port where the vessel is brought, but in case there is not, to the nearest Swedish agent or vice-agent, a faithful report, duly certified, of the circumstances of the seizure in full detail.

SECTION 14

In conformity with our previous orders, no foreign privateer shall be permitted to enter a Swedish port, or to send its prizes thereto, except in case of evident distress. Our subjects are likewise forbidden to purchase foreign privateers, which may have been admitted to a Swedish port for the above mentioned reason, prizes or captured goods of any kind whatever.

The present regulations shall be published wherever it is deemed necessary, in order that no one may allege ignorance thereof. We command and order all those whom it may concern to conform strictly hereto. In faith whereof we have signed these presents with our own hand and have hereto affixed our royal seal.

Given at Munich, January 21, 1804.

[L. S.] GUSTAVUS ADOLPHUS

GUST. LAGERBIELKE

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DIVISION OF INTERNATIONAL LAW

Pamphlet No. 28

EXTRACTS FROM AMERICAN AND FOREIGN
WORKS ON INTERNATIONAL LAW CON-
CERNING THE ARMED NEUTRALITY OF
1780 AND 1800.

PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.

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Prefatory Note

A previous pamphlet of the present series contains the texts of the agreements constituting the first and second armed neutrality of 1780 and of 1800, and in the prefatory note a statement was made that an expression of personal opinion was avoided. It is, however, very important that the origin, nature, and effect of the armed neutrality should be understood, and for this purpose the views of accredited American and foreign publicists dealing with this matter have been collected and issued in the present pamphlet.

In addition to the extracts contained herein, the reader will find in the Introduction to Pamphlet No. 27 entitled *Official Documents bearing on the Armed Neutrality of 1780 and 1800* an extended account of the subject by the distinguished American publicist Doctor Henry Wheaton taken from his work on the history of the law of nations.

It should be said, in conclusion, that the authors have been chosen, not merely for the value of their contributions, but because they are of different nationalities and can be considered as fairly representative of the views of their respective countries, as publicists are wont to expound and to defend the policies of their countries.

JAMES BROWN SCOTT,
Director of the Division of International Law.

WASHINGTON, D. C.
February 28, 1917.

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EXTRACTS FROM AMERICAN AND FOREIGN WORKS ON INTERNATIONAL LAW CONCERNING THE ARMED NEUTRALITY OF 1780 AND 1800.

CALVO: *Le Droit International Théorique et Pratique*. Fifth edition, Paris, 1896.

Carlos Calvo. Argentinian publicist and diplomat; born in 1824; died in 1906; member of the Institute of International Law. M. Calvo entered, at an early date, the consular service of his country and later was Argentinian minister at Berlin and Paris. He therefore was familiar with the theory and practice of international law. Two of his most important works are:

1. *International Law of Europe and America, Theoretical and Practical*, 1868, 2 volumes. This work appeared in Spanish, was translated and expanded by the learned author into a comprehensive treatise on international law, the fifth edition of which appeared in 1896 in six volumes.

2. *Dictionnaire de Droit International*, 1885, 2 volumes. This work covers the field of international law, public and private, in the form of brief articles, arranged alphabetically under appropriate headings, and is especially valuable for the biographical notices of the various publicists who have treated international law.

M. Calvo is regarded as the leading Spanish writer on international law, and as a Latin-American by origin his various treatises have a peculiar value as a statement of the Latin-American theory and practice as well as the system of International law as understood and applied in Europe.

Volume IV, page 414, § 2498.—The rule established by the *Consolato del Mare* was not merely shaken at this time by the criticisms of publicists and by the contrary doctrine of the courts; it was also censured by most of the conventional engagements concluded between France and various nations, to such an extent that during the period between 1654 and 1780 it is found in only fifteen treaties, while thirty-six sanctioned the new principle: *free ship, free merchandise*, and *enemy ship, enemy merchandise*.¹

¹See especially the treaties concluded by France with Spain, November 7, 1659 [Dumont, vol. vi, part 2, p. 264; Savoie, vol. ii, p. 1; Léonard, vol. iv], with Denmark, February 14, 1663 [Dumont, vol. vi, part 2, p. 436; Léonard, vol. v], with Portugal, March 31, 1667 [Dumont, vol. vii, part 1, p. 17; Castro, vol. i, p. 338; Léonard, vol. iv], with Sweden, April 14, 1672 [Dumont, vol. vii, part 1, p. 166; Léonard, vol. v], with Great Britain and Holland, April 11, 1713 [Dumont, vol. viii, part 1, pp. 345, 377].

§ 2499.—The unshakable constancy of the English policy during this period deserves attention from more than one point of view.

On the basis of the maxims proclaimed by *Consolato del Mare*, England permitted the perpetration of the most odious attacks against the property of the neutrals, including among the articles of war contraband almost all articles of licit commerce and went as far as to confiscate articles of food and of clothing. She pretended in 1756 that by *adoption*, the Dutch vessels had been converted into French vessels, that is to say, into enemy vessels, and she condemned them to confiscation in order to prevent the French colonies to continue their traffic with neutrals and thus hope to mobilize the commerce of colonial produce. We know that the excesses of this engaging and covetous policy brought about in 1780 the belated, yet generous attempt known under the name of first armed neutrality.¹

§ 2500.—The most characteristic trait of the historic period which ends with the last half of the Eighteenth Century is the incertitude as to the real limitations to the rights of the neutrals, the logical and necessary consequence of the lack of uniformity in jurisprudence, of the absence of understanding between the secondary maritime Powers of the European Continent in order to protect themselves against the Prussians weighing on them, and of the persistency of England to cause her maritime supremacy to dominate.

§ 2501.—The secret tendencies and the righteous resentment of the principal courts of Europe were at last brought to the bursting point when England seized in the Mediterranean two Russian vessels loaded with wheat which were supposed to be intended for Gibraltar.

Panin, the Chancellor of the Russian Empire, made himself the mouthpiece of the general indignation and persuaded Empress Catherine II to make it publicly and solemnly known that she would not longer put up with the obstacles placed in the way of free neutral commerce. As a result, the Russian Government published on February 28, 1780,² the famous declaration containing the following five bases:

¹Gessner, pp. 30, *et seq.*; Flassan, *Hist.*, vol. i, chapter iii, p. 194; Valin, *Com.*, book iii, title 9; Wheaton, *Hist.*, vol. i, p. 62; Wheaton, *Elem.*, part 4, chapter iii, § 23; *Life of Sir L. Jenkinson*, vol. ii, p. 720; Heffter, § 152; Marshall, on *Insurance*, vol. i, p. 425; Ortolan, vol. ii, p. 100; Vergé, *Précis de Martens*, vol. ii, p. 348; Gessner, pp. 36, *et seq.*; Wheaton, *Elem.*, vol. ii, pp. 149, *et seq.*; Heffter, § 158; Madison *Examination*, pp. 51, *et seq.*; Ortolan, vol. ii, pp. 109, *et seq.*; Reddie, *Researches*, vol. i, pp. 92, *et seq.*; Bergbohm, *Die bewaffnete Neutralität*, 1880-1883.

²Martens, first edit., vol. ii, p. 74; second edit., vol. iii, p. 158.

1. Neutral vessels are permitted to sail from port to port and along the coasts belonging to the belligerent States, without being detained.

2. Enemy merchandise is free under neutral flag, excepting war contraband.

3. To determine that which is to be regarded as war contraband, Russia holds to Articles 10 and 11 of her treaty with England, dated June 20, 1766,¹ to which it grants obligatory force with regard to all belligerents.

4. No port shall be regarded as blockaded unless there be real and effective danger to entering it, that is to say, it must be surrounded by the enemy.

5. These principles shall serve as a rule in the procedures and decisions of maritime prize courts.

The same Government furthermore forbids the commission of hostile acts in the Baltic Sea, to which Sea it attributed the character of a closed or internal sea, *mare clausum*.

This declaration had hardly been formulated when Denmark, July 9, 1780,² Sweden, August 1, 1780,³ Holland, January 3, 1781,⁴ Prussia, May 8, 1781,⁵ Austria, October 9, 1781,⁶ Portugal, July 13, 1782,⁷ the two Sicilies, February 10, 1783,⁸ France and Spain, as well as the United States which was at this time at war with Great Britain, gave their adhesion to it; all of these Powers obligated themselves to maintain and to respect the new principles though, to uphold them, they should be forced to the recourse of arms.

One understands that principles such as Europe, stipulated by the initiative of Russia sought to cause to prevail in practice and which in evident fashion mark a new era in modern maritime law, could not receive the approval of England. The St. James' ministry refused therefore to join the league of the neutrals declaring that it would continue to hold to the stipulations, following therein a precise and reasonable

¹Martens, first edit., vol. i, p. 141; second edit., vol. i, p. 390; Wenck, vol. iii, p. 572.

²Martens, first edit., vol. ii, p. 103; vol. iv, p. 357; second edit., vol. iv, p. 189.

³Martens, first edit., vol. ii, p. 110; second edit., vol. iii, p. 198.

⁴Martens, first edit., vol. ii, p. 117; vol. iv, p. 375; second edit., vol. iii, p. 215.

⁵Martens, first edit., vol. ii, p. 130; second edit., vol. iii, p. 245.

⁶Martens, first edit., vol. ii, p. 171; second edit., vol. iii, p. 257.

⁷Martens, first edit., vol. ii, p. 208; second edit., vol. iii, p. 263; Castro, vol. iii, p. 310.

⁸Martens, first edit., vol. iii, p. 274; second edit., vol. iii, p. 267.

course, contained in England's treaties of commerce and of navigation. But once started, the movement was not to stop in the face of this selfish resistance, and England was soon compelled to abandon the violent road within which it pretended to persist in disregard of the sacred rights of neutrality; she permitted the importation under any flag of merchandise coming from the East and from the Antilles, and directed her privateers to be more moderate in their conduct.¹

§ 2502.—After the conclusion of the Versailles peace of 1783,² which closed the War of Independence of the United States, England, France and Spain again put into force the stipulations of the Utrecht Treaties³ with regard to commerce and navigation of the neutrals. Three years later, the treaty signed on September 26, 1786,⁴ between France and the United States sanctioned the general principles of armed neutrality in such a formal manner that the English Government became the object in Parliament of vehement attacks for having accepted and recognized them.⁵

§ 2503.—The abnormal conditions of the war in the train of the French Revolution unhappily brought about a return to all the violence and abuse which universal reprobation seemed to have forever put an end to. Thus, the allied governments, in disregard of the imprescriptible rights of the neutrals, arbitrarily extending the list of so-called articles of war contraband, opposed importation into France of food and merchandise of foreign origin. On the other hand, the National Convention, in a sense of legitimate defense, promulgated May 9, 1793, a decree inhibiting neutral vessels, under the penalty of confiscation, from furnishing grains and food to the enemy, and edicted the abrogation of the principle that the flag protects merchandise. The Britannic Government, secretly availing itself of this pretext to return

¹Gessner, pp. 39, *et seq.*; Wheaton, *Hist.*, vol. i, p. 221; Goertz, *memoirs*; Galiana, *Dei doveri*; Lampredi, *Commercio*; Wheaton, *Elem.*, part 4, chapter iii, § 23; Klüber, *Droit*, §§ 303-305; Ortolan, vol. ii, pp. 137, *et seq.*; Martens, *Précis*, § 325; Vergé, *Précis de Martens*, vol. ii, p. 351; Bergbohm, *Die bewaffnete Neutralität*, pp. 210, *et seq.*

²De Clercq, vol. i, p. 142; Calvo, vol. iv, p. 296; Cantillo, p. 586; Martens, first edit., vol. ii, pp. 462, 484; second edit., vol. iii, pp. 519, 541; *State papers*, vol. i, p. 424.

³De Clercq, vol. i, p. 10; Dumont, vol. viii, part 1, pp. 345, 351.

⁴De Clercq, vol. i, p. 146; Martens, first edit., vol. ii, p. 680; second edit., vol. iv, p. 155; *State papers*, vol. iii, p. 342.

⁵Gessner, pp. 43, 44; Wheaton, *Elem.*, part 4, chapter iii, § 23; Wheaton, *Hist.*, vol. i, p. 230; Ortolan, vol. ii, pp. 142, 143; Vergé, *Précis de Martens*, vol. ii, p. 354; *Parliamentary History of England*, vol. xxxvi, p. 563.

to its traditional doctrines of 1756 published on June 8, 1793,¹ an ordinance directing its privateers and warships to capture any vessel attempting to force the blockade of the French coasts, excepting therefrom Swedish and Danish vessels, which were only to be seized in case they failed to observe the notification of the blockade stated in their ships' papers.²

§ 2504.—England's allies endeavored in vain to justify these measures as being of only an exceptional and transitory nature; Russia refused to abide by them, separated herself from England, from Austria, and resolutely laid down the bases of maritime neutrality which the States bathed by the Baltic Sea proclaimed in 1800,³ These bases may be summarized as follows:

1. A neutral vessel shall not be considered as violating the blockade and shall not be subject to capture unless, after having been warned by the war-ship or the privateer of the State which enforces the blockade, it attempts to run the blockade by force or by ruse.

Merchant vessels sailing in convoy under the escort of a war-ship are exempt from search, and the statement of the convoying officer suffices to prove that they are not carrying war contraband.

Even before this new coalition had had time to gain strength and come to an understanding, England declared war against Denmark for having joined the alliance and proceeded to bombard Copenhagen; the subsequent tragic death of Emperor Paul I of Russia on March 23, 1801, finished the dissolution of an alliance from which the secondary states had had right to expect great advantages for the security of their commerce.

§ 2505.—Profiting by the successes of her marine against Denmark, England resumed the negotiations which she had conducted with Russia for some years, thus expecting the St. Petersburg ministry not only to dissolve the armed neutrality, but also of adhering to the doctrines proposed by the Britannic Admiralty. In these hopes she was particularly disappointed: as the price for some commerce ad-

¹Martens, first edit., vol. v, p. 264; second edit., vol. v, p. 596.

²Ortolan, vol. ii, pp. 144, *et seq.*; Gessner, pp. 44, 45; Wheaton, *Elem.*, pt. 4, chapter iii, § 23.

³See the conventions of Russia with Denmark of December 16, 1800 [Martens, first edit., *Supplément*, vol. ii, p. 399; second edit., vol. vii, p. 181; *State papers*, vol. i, p. 327], with Sweden of the same date [Martens, first edit., vol. vii, p. 516; first edit., *Supplément*, vol. ii, p. 389; second edit., vol. vii, p. 172] with Prussia of December 18, 1800 [Martens, first edit., *Supplément*, vol. ii, p. 406; second edit., vol. vii, p. 188].

vantages, she was forced into consenting that the Maritime Convention of June 17, 1801,¹ should by its Article 3 sanction the following principles:

1. Neutral vessels may freely sail to the ports and along the coasts of the belligerent nations.

2. Merchandise on board shall be free, excepting the so-called *war contraband* and *enemy property*, merchandise of enemy origin, but purchased and carried by the neutral preserving at all events the advantages accrued to the flag of the latter.

3. In order to remove all doubt as to the nature of the objects which constitute war contraband, the contracting parties refer to Article XI of the Treaty of Commerce concluded between themselves on February 21, 1797.²

4. A port shall be regarded as blockaded only in case entrance thereto offers a real danger by reason of the number of war-ships charged with inhibiting access thereto.

5. Judicial action against neutral vessels captured because of established suspicions or of evidently culpable facts shall be had without delay, and the mode of procedure shall be uniform and strictly legal.

The dispositions which follow shall be rigorously imposed upon all the States wishing to adhere to the treaty. The so delicate question of the visit of convoyed ships was resolved in these terms by Article 4:

1. The right of searching merchant vessels owned by the subjects of one of the two Powers and sailing under the escort of a war-ship of their nation belongs exclusively to vessels of like rank of the belligerent State, and may not be exercised by private ship owners nor by corsairs.

2. The owners of vessels destined to sail in or convoy under the escort of a war-ship shall, before receiving their nautical instructions, present to the chief of the convoy their passports and their sea certificates, in the form established by the treaty.

3. When a convoy is made by a war-ship of the belligerent parties, the latter, unless the weather conditions upon the sea or the vicinity in which the encounter takes place prevent it from doing so, shall hold itself beyond cannon range and send a longboat to the convoying vessel in order to proceed in common accord to the examination of the

¹Hertslet, vol. i, p. 208; Martens, first edit., *Supplément*. vol. ii, p. 476; second edit., vol. vii, p. 260.

²Martens, first edit., vol. vi, p. 722; second edit., vol. vi, p. 358.

papers and certificates declaring that the one is authorized to escort such or such ships with such or such cargo from port A to port B, and that the other really belongs to the royal or imperial marine of the nation whose flag she flies.

4. After the regularity of the papers has been recognized, any legitimate suspicion shall be regarded as having been removed, in the contrary case, the chief of the convoy, after having been invited thereto in due form by the belligerent shall stop long enough in order to permit the belligerent war-ship to proceed with the search of the vessels composing the convoy.

5. If after the examination of the papers, the captain of the war-ship believes that he has good reason to detain one or several of the convoyed vessels, he shall be free to do so by preliminarily placing the captain of the crew at the disposal of the chief of the escort, who in turn shall be entitled to place on board the sequestered vessels any one of his officers to follow the procedure of the investigation which it will be necessary to perform. The captured vessel shall then be conducted forthwith to the nearest and most convenient port of the belligerent nation in order to subject it to a regular examination.

A last article, the fifth, forbids the chief of the convoy to resist by force the execution of the acts prescribed by the commander of the belligerent vessel.

Various accessory stipulations of this treaty sanctioned under the guaranties in the interests of the neutrals; one of these in particular states that in case of an ill-founded detention or of the violation of the established laws, a proper indemnity shall be due the owners of the vessel and of the cargo in proportion to the losses they shall have sustained.

In order to forestall the abusive use of third flags, Article 7 establishes that, in order that a vessel may be regarded as legitimately belonging to the nation whose colors she flies, the captain and half of the crew must be subjects of the same nation.

Finally, Article 8 declares applicable to all maritime rules undertaken by the contracting parties, the principles of this treaty adhered to by Denmark on October 23, 1801,¹ and by Sweden on March 30, 1802.²

¹Hertslet, vol. i, p. 204; Martens, first edit., *Supplément*, vol. iii, p. 193; second edit., vol. vii, p. 273.

²Martens, first edit., *Supplément*, vol. iii, p. 196; second edit., vol. vii, p. 276.

§ 2506.—As also seen from this analysis, it was the purpose of the Anglo-Russian Treaty to consolidate through general formulas, the rules established by the two armed neutralities of 1780 and of 1800 with the traditional principles of the maritime law of Great Britain. Looked at from this point of view, it must be acknowledged that this arrangement was only a compromise between two opposite elements; it had, however, for its final result the partial abandonment of the violent policy of the London ministry. The nations of the North did indeed consent to weaken in fact the rigor of the doctrine that the free vessel protects the cargo it bears, and to submit to the right of search which they had hitherto opposed; but they obtained at the same time recognition for the principles of armed neutrality with regard to effective blockades and to the commerce with the colonies and along the coasts of the enemy.

To feel convinced that this was the real meaning of the St. Petersburg Treaty, it will suffice to refer to the discussions which took place in the House of Lords, at the sitting of November 12, 1801. Lord Grenville spoke first and declared that what had been stipulated was in manifest contradiction with the previous attitude of the ministers of his Britannic Majesty, and that the exaggerated pretensions of the Baltic Powers had been singularly favored by the weak and vacillating policy of England during the last years of the war waged against the United States. According to the same orator, the Government had assumed a yielding attitude whose tendency could not be controlled, and gradually it had followed a course it had not dared acknowledge one year before, while on their part the other Powers had little by little yielded of their pretensions which they had maintained relative to this question and exposed themselves, by following in the footsteps of the Russian Government, to yield by making first one and then another concession, to the reestablishment of the ancient maritime law and to the notification of conquests so laboriously realized by the neutrals during the previous twenty-five years.

§ 2507.—The final result was that the treaty of June 17, 1801,¹ proved unsatisfactory to all of the contracting parties: to England because it interfered with her policy; to the neutrals because it restricted their rights; and for this reason also Russia denounced the treaty in the course of the year 1807 by proclaiming again the prin-

¹Hertslet, vol. i, p. 208; Martens, first edit., *Supplément*, vol. ii, p. 476; second edit., vol. vii, p. 260.

ciples which formed the basis of the armed neutrality of 1801 and by pledging herself to abide by it faithfully in the future. Thus freed from its conventional engagements, the English Government reestablished its ancient doctrines not only against Russia, but even against all the other neutral Powers.

One fact worthy of our notice is that not a peace treaty or a commercial treaty concluded since by England, either with Sweden, or with Denmark, contains the slightest stipulation concerning the principles of maritime law in the interest of the neutrals who had for such a long time roused the attention of Europe.¹

Volume IV, page 518, § 2638.—The neutral State shall not merely observe neutrality, but even have its situation respected by third parties and to that effect take all necessary measures. If need there be, it may equip land and sea forces in order to safeguard its rights against any attack and to prevent the belligerents from entering its territory: This is what is termed *armed neutrality*. Neutrality, when the State which proclaims it is not in position to make it respected by an eventual recourse to armed force, is doubtless a rather precarious guaranty. It is therefore admitted that the neutral who does not feel himself strong enough to defend himself alone is entitled to ally himself with others to perfect an action and help against attacks which the belligerents might direct against their common neutrality, thus, at the end of the last century and at the beginning of the present one, we have seen the maritime Powers of the North of Europe unite collectively and mutually to protect their rights against the pretensions of England which violated the independence and the immunities of maritime neutrality.²

¹Ortolan, *Règles*, vol. ii, pp. 153–156; Cauchy, vol. ii, pp. 339, *et seq.*; Gessner, pp. 44–46; Wheaton, *Elem.*, pt. 4, chapter iii, § 23; Klüber, *Droit*, §§ 307, *et seq.*; Martens, *Précis*, § 326^a; Cussy, *Phases*, vol. ii, pp. 203, *et seq.*; Vergé, *Précis de Mariens*, vol. ii, p. 355; Manning, pp. 274, *et seq.*

²Fiore, vol. ii, p. 369; Bluntschli, §§ 748, 778; Klüber, *Droit*, § 282; Heffter, §§ 145, 149.

HALL: *The Rights and Duties of Neutrals*. London, 1874.

William Edward Hall. British publicist and member of the Institute of International Law, born in 1835, died in 1894. Mr. Hall is known in international law for his *Rights and Duties of Neutrals*, 1874, and especially for his masterly *Treatise on International Law*, first published in 1880.

The latter work has run through six editions, and has been regarded as an authority—indeed, a classic—from the date of its appearance, in 1880. The writer's national bias crops out at times, and has subjected the work to no little criticism.

Page 106.—It was natural, however, that the secondary maritime powers should in time accommodate their theories to their interests. They were not sure of being able as belligerents to enforce a stringent rule; they were certain as neutrals to gain by its relaxation. Accordingly, in 1780 Russia issued a declaration of neutral rights, among the provisions of which was one limiting articles of contraband to munitions of war and sulphur. Sweden and Denmark immediately adhered to the declaration of Russia, and with the latter power formed the league known as the First Armed Neutrality. Spain, France, Holland, the United States, Prussia, and Austria, acceded to the alliance in the course of the following year. Finally it was joined in 1782 by Portugal, and in 1783 by the Two Sicilies.

It is usual for foreign publicists to treat the formation of the Armed Neutrality as a generous effort to bridle the aggressions of England, and as investing the principles expressed in the Russian declaration with the authority of such doctrines as are accepted by the body of civilized nations. It is unnecessary to enter into the motives which actuated the Russian Government;¹ but it is impossible to admit that the doctrines which it put forward received any higher sanction at the time than such as could be imparted by an agreement between the Baltic powers. The accession of France, Spain, Holland, and the United States was an act of hostility directed against England, with which they were then at war, and was valueless as indicating their settled policy, and still more valueless as manifesting their views of existing international right. It was the seizure by Spain of two Russian vessels laden with wheat which was the accidental cause of the

¹The intrigues which led to the issue of the Russian declaration are sketched by Sir R. Phillimore, iii, Sec. 186; see also Lord Stanhope, *History of England*, chap. lxii.

original declaration, and within a few months of adhering to the league France had imposed a treaty upon Mecklenburg, and Spain had issued an Ordinance, both of which were in direct contradiction to parts of the Declaration.¹ The value of Russian and Austrian opinion in the then position of those countries as maritime powers is absolutely trivial. Whatever authority the principles of the Armed Neutrality possess, they have since acquired by inspiring to a certain but varying extent the policy of France, the United States, Russia, and the minor powers.

Page 141.—The Second Armed Neutrality reasserted for a moment the principles of 1780, but one of the articles of the treaty concluded between England and Russia in 1801, to which Denmark and Sweden afterwards acceded, provided that the property of enemies on board neutral vessels should be confiscable. In 1807 Russia annulled the convention of 1801, and proclaiming afresh the principles of the Armed Neutrality, declared that she would never depart from them;² but in 1809 an ukase was issued under which “ships laden in part with the goods of the manufacture or produce of hostile countries were to be stopped, and the merchandise confiscated and sold by auction for the profit of the crown. But if the merchandise aforesaid compose more than half the cargo, not only the cargo, but the ship also shall be confiscated.”³

HEFFTER: *Le Droit International de l'Europe*. Translated by Jules Bergson. Fourth French edition, enlarged and annotated by F Heinrich Geffcken. Berlin, Paris, 1883.

August Wilhelm Heffter. German publicist; born 1796; died 1880; Professor in the University of Berlin; Member of the Institute of International Law. His well-known treatise, entitled “*Das Europäische Völkerrecht der Gegenwart auf*

¹All the signatories to the Declaration of the Armed Neutrality violated one or other of its provisions when they were themselves next at war.

²Ortolan, ii. 156.

³De Martens, *Recueil, Supp.* v. 485.

den bisherigen Grundlagen," appeared in 1844, and was regarded immediately upon its publication as a leading, if not the most scientific and accurate volume devoted to international law. The author had large experience at the bar and on the bench and was for many years an ornament of the University of Berlin. The work has been translated into various languages.

Page 362, note 4.—The principles contained in the first declaration of the Court of Russia, dated February 28, 1780, may be summed up as follows:

(1) Neutral vessels may sail freely from port to port along the coasts of the nations at war.

(2) Effects belonging to subjects of the said Powers at war are free on board neutral vessels, with the exception of contraband goods.

(3) As to the determination of what is contraband, the Empress abides by the provisions of Articles 10 and 11 of her treaty of commerce with Great Britain, extending the application of these obligations to all the Powers at war (these articles limited the prohibition to arms and munitions of war).

(4) To determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power shall have stationed its war-ships sufficiently near to render access thereto dangerous.

(5) These principles shall constitute the rule in proceedings and judgments involving the legality of prizes.

See de Martens, *Recueil*, vol. 3, p. 158. Several other provisions contained in subsequent treaties were added to those mentioned above. The history of the armed neutrality and its numerous vicissitudes has been very well told by Klüber, *Droit des gens*, §§ 303–309; Wheaton, *History*, p. 223, 311 *et seq.* (I, 358; II, 83 ed. 2). See also the writers quoted by Kamptz, § 258. On the stand taken by the Congress of the United States of America with regard to the question, see Trescott, *The Diplomacy of the Revolution*, New York, 1852, p. 75. [Geffcken's Note: The war waged by England from 1775–1783 with its insurgent American Colonies had, by the participation of France and Spain, assumed a general aspect. France and Holland maintained the principle that the flag covers the goods; but Spain and England refused to recognize this principle. The latter especially employed its preponderant naval strength in a way that worked great hardship to neutrals. At the same time England eagerly sought an alliance with Russia.

According to the memorials of Goertz and of Sir James Harris (Lord Malmesbury), the English envoy had won Potemkin over to his side, and their scheme was only frustrated by a clever stroke on the part of the Minister of Foreign Affairs, Count Panin, a partisan of Frederick II, who had been hostile to England ever since that country had deserted Prussia during the Seven Years' War. Panin had dazzled the eyes of the Empress with the armed neutrality league of 1780 as a movement in the interest of civilization, and Catherine did not have a very clear notion of the scope of this measure, which was really directed against England. This version is no longer tenable, in view of the recent publications of Katchenowsky (Prize Law), of Mr. de Martens in his commentary contained in the collection of treaties concluded by Russia, volumes 2 and 3, and of Eichelmann, *Der Bewaffnete Neutralitätsbund Russlands vom Jahre 1780*. These works show that the league was a plan carefully thought out by Catherine and followed from 1778 by negotiations with Denmark for the purpose of safeguarding the rights of neutrals. It was Count Bernstorff, the eminent Danish Minister, who gave practical form to the ideas of the Empress, and the seizure of a Russian vessel by the Spanish Government was the final blow which removed the difference of opinion between Russia and Denmark with regard to the measures to be taken. The declaration adopted by the two Powers was submitted to Sweden, the Netherlands, France, the United States, Prussia, and Austria, with a view to their accession. It was the first great collective measure of maritime law, for the States which acceded to the Russian declaration adopted also its system in their intercourse with each other, and in spite of its imperfections, it was a progressive measure uniting neutrals for the defense of their rights against the arbitrary action of England. This explains the cordial welcome that greeted the Russian proposal and assures it an important place in the history of international law. Therefore if Catherine subsequently asked Sir James Harris, as he relates, "But in what way does this neutrality, or rather armed nullity, hurt you?" it was merely a part of her tactics. Harris's answer is no less interesting. "In every way that it possibly can," said he. "It lays down new laws which protect the commerce of our enemies while exposing ours; it leaves them their merchant ships for the transportation of their troops; it tends to confuse our friends with our enemies. We shall do everything we can for your ships, but Your Imperial Majesty surely does not intend by this armed neutrality that every nation shall enjoy the same right." On Catherine's refusal to aban-

don her declaration, England, in order to win over Russia and other neutral Powers, consented to make special concessions by treaty, but refused to adhere to the declaration, although Fox, who had entered the Ministry in 1782, looked upon it with favor. On making peace with France in 1783, England simply renewed the aforesaid stipulations of the treaty of Utrecht. It refused a similar concession to Holland, which had enjoyed these rights since 1634, as well as to the United States, and thus succeeded in destroying the coalition of the signatories of the declaration, which was gradually abandoned by all the Powers which had adhered to it. On March 25, 1793, Russia even signed a treaty with England, prohibiting neutrals to give even indirect protection to the commerce or property of the French, with whose country they were at war (Article 4) Martens, *Recueil*, vol. 5, p. 115; Fox, *Memorials*, I, III). The Wars of the French Revolution in general revived these abuses. The Allied Governments forbade neutrals to carry into France provisions and goods from foreign sources. The Convention followed suit in its own defense, and on March 9, 1793, abrogated the principle that the flag covers the goods. In 1794 England proclaimed the rule that neutral nations had the right to carry merely their own products, but not those of other countries (Katchenovsky, p. 77, note i). France replied to these measures by declaring every vessel to be lawful prize that was laden even partially with goods emanating from England, no matter who was their owner, and drew up a list of articles *reputed* to be the products of English factories, no matter where they actually were made. The Baltic States, on their part, proclaimed anew in 1800 the principles of armed neutrality, with certain additions.]

KATCHENOVSKY: *Prize Law: particularly with reference to the Duties and Obligations of Belligerents and Neutrals.* London, 1867.

Dmitrii Ivanovich Katchenovsky. Russian publicist; born in 1827; died in 1872; professor of international law at the University of Kharkov. Professor Katchenovsky is well known in the literary circles of the Continent for the extent and accuracy of his attainments and is the author of several learned and interesting works.

Page 61.—In the year 1776 commenced the memorable struggle between England and the United States of America. Experience proves that civil wars are particularly cruel, and are seldom conducted on any principle of justice or international law. Consequently, in order to remove all pretexts on the part of the belligerents for the oppression of commerce, the neutral Powers hastened to publish decrees in the same spirit, enjoining their subjects under fear of punishment to observe strict impartiality in that war. But these measures were to no purpose, as, amongst the belligerents, France alone made any perceptible modification in her former practice about neutral trade, whilst Spain openly avowed her intention of acting towards the neutrals in the same way as they allowed the English to treat them. Great Britain returned to her former system, and, taking advantage of the internecine character of the war, endeavored wholly to suppress neutral commerce. Regarding her enemies as rebels, and their allies as abettors of civil war, she forbade all nations to have any connection with her former colonies. The English privateers, taking advantage of this feeling on the part of their government, and in the hope of all their captures being condemned as prizes, attacked every suspicious looking vessel they encountered. It must be added that the list of contraband goods was considerably enlarged, and the definition of blockade rendered still more vague at that time. Marriott, then judge of the Admiralty Court, laid down the following principles of maritime war as immutable: 1. The belligerent has a right to seize on board neutral ships everything which might be made use of by the enemy for his defense. 2. Great Britain, lying between the German Sea and the Atlantic Ocean, forms, by its very position, a natural blockade to all the ports of France and Spain. 3. The rights of neutral nations depend on the customs or practice of the belligerents; treaties are but temporary privileges, valid only as long as the Admiralty Court finds it convenient to make use of them. The effect of this prize practice threatened ruin to neutral commerce, since it was evident that England would allow no maritime law but her own to be enforced. Happily, however, international justice at that time found powerful supporters in other parts of Europe; for, from the year 1780, Russia formed with seven other Powers a strong coalition, which checked the violence of privateers, and secured the rights of neutrality.¹

¹Martens, *Recueil*, vol. iii, p. 158. See Additional Note at end of this Period, p. 70.

There was no difficulty in the allies agreeing upon fundamental principles: they resolved—

1. Only to permit the seizure of neutral vessels where the duties of neutrality had been unquestionably violated.

2. To require from the belligerents that judicial proceedings against neutrals should be commenced without delay, and in accordance with an uniform, clear, and legal system.

3. In case of neutrals having unjustly suffered, to compel the belligerents not only to pay damages, but also to make compensation for the insult offered to the neutral flag, otherwise to have recourse to reprisals.

4. To adopt these rules as the principle of a future maritime code (*Code Maritime Universel*).

The armed neutrality soon succeeded in its object, and put an end to the irregularities of the Admiralty Courts. France, Spain, Holland and the United States revoked their former decrees, and published new ones in conformity with the declaration of the Empress Catharine.¹ Great Britain herself was at last obliged to yield to the influence of this powerful coalition, and mitigated, though not avowedly, the severity of her prize laws.² One of the best results of the coalition was the diminution of privateers, according to the testimony of a contemporary, who says, "At the end of the war privateering had almost disappeared, and neutral commerce flourished almost as much as in a time of profound peace."³

At the conference of Versailles, the commercial treaty of Utrecht was again renewed by England, France, and Spain; but knowing by

¹The French Government had already in the year 1780 directed their admiral and privateers not to molest neutrals, even though apparently destined to enemy's ports, and in no case to capture them, unless they had a cargo of war contraband, or were engaged in the transport of English troops, or harbored Englishmen under a neutral flag. *Code des Prises*, ii, 866-868, 875, 886. Martens, *Recueil*, vol. iii, p. 163. The Dutch decree of 1781 also adopts the principles of the armed neutrality. (Martens, *Merkwürdige Fälle*, vol. ii, p. 313, Article 42.) The same may be said of Spain and of the United States of America, whose decrees are to be found in Martens, *Recueil*, vol. iii, p. 161; Wheaton, *Histoire*, vol. i, p. 367.

²In the years 1781-2, secret instructions were given to the English privateers, to the effect that they should carefully abstain from collision with neutrals. With respect to Russian ships, England showed no intention to enforce visitation, as we may conclude from the letter of Lord Malmesbury to Count Panin. See *Lord Malmesbury's Diary and Correspondence*, London, 1845, vol. i, pp. 232, 319, 410. The cabinet of St. James, however, never formally recognized the armed neutrality, but made every effort in its power to dissolve the coalition. Of the English statesmen Fox alone did not agree with his fellow-countrymen, and even intended afterwards to conclude with Holland, through the mediation of Russia, a treaty of peace on the principles of 1780. Lord Malmesbury, vol. iv, pp. 25, 26, 42, 53; Wheaton, *Histoire*, vol. i, pp. 367, 368.

³See Dohm, *Denkwürdigkeiten meiner Zeit*, Lemgo, 1815, S. 153. See also Büsch, 284.

experience that such renewals were of little practical utility, and fearing that the belligerents would return to their former malpractices, the members of the "armed neutrality" resolved to proceed with the work which had been so successfully commenced. Accordingly the principles of 1780 were more fully developed, and having been introduced nearly by all the nations of Europe into their commercial treaties and alliances, found support even in America. In the course of the next ten years, namely, from the peace of Versailles to the year 1793, measures were taken and rules laid down in order to reform the prize law of the belligerents, and to secure the independence of neutrals at sea. Reviewing the treaties of that time¹ we find in them some important clauses concerning the right of visitation (*visite*), evidence in prize courts, and the legal forms of proceeding.

1. *Visitation*. The declaration of 1780 made no mention of the right of search, and as long as the "armed neutrality" remained a powerful coalition, privateers did not venture upon a search or any other irregular proceedings. In order to prevent at a future time a repetition of such abuses, the treaties (1783-1793) generally assume that visitation ought to be confined to the verification of the papers; while search, breaking open coffers, interrogating the crew, etc., are all strictly forbidden to privateers. However, if on board the ship there are not found any papers, the privateer may, with the concurrence or at least in the presence of the owner or master, put a seal upon the cargo, make an inventory of it, and bring the ship into a port of his own country. Search then can only be made in the presence of an officer of the Admiralty Court, and immediately before the commencement of the suit. A neutral subject, on board of whose ship are found contraband goods, may deliver them up to the privateer, and is entitled to continue his voyage with the rest of the cargo without molestation.² The declaration of 1780 is also silent on the question, whether a ship sailing under neutral convoy is free from visitation, but shortly after the establishment of the "armed neutrality," England and Sweden entered into an angry discussion on that subject, whereupon the Swedish Government addressed a note to that of Russia, to ask its opinion upon the point, and received for answer, that the subjecting of ships

¹The Treaties of 1783-1793, in which are developed and explained the principles of the "armed neutrality," are to be found in the 3rd and 4th volumes of the collection of Martens.

²With respect to the treaties of the United States with Holland (1782), and of Russia with Denmark (1782) and Austria (1785), see Martens, vol. iii, pp. 427, 468; iv, p. 72, etc. The same principles are adopted in a treaty between France and England (1786). Martens, vol. iv, p. 155.

under convoy to visitation would be insulting to the national flag; and that cruisers or privateers of the belligerents ought to be satisfied concerning the neutral character of the ship and cargo, with the verbal information of the officer in command. This opinion of the Russian court met with general approbation, and being considered as one of the principles of the "armed neutrality" was inserted in almost all the treaties of that time from the year 1782.¹

2. The *evidence* in prize cases is, according to treaties, the ship's papers,² namely, passport, and documents about the nature and destination of the cargo. As to the ownership of the cargo the neutral is not bound to have documents relating to that, because the property, even of an enemy, is considered free under a neutral flag (*frei Schiff, frei Gut*). The passport, which is not usually given for more than two years, and should be renewed on the return of the ship to its own country, ought to contain the name of the ship and of its owner, as well as the domicile of the master, which is to be duly particularized. Prize courts formerly condemned all ships built in the country of the enemy, and purchased by neutrals in the time of war, without admitting any excuse in justification. The "armed neutrality" endeavored to put an end to this practice, though the different governments did not come to an agreement, without a long discussion as to the alterations which should be introduced into the maritime law on this subject. The points in dispute, however, were at last settled, by empowering the neutral to order ships to be built in the country of an enemy on his own account, or to purchase those already built, and the belligerent was bound to admit, as conclusive proof, the bill of sale. To this was added that the subject of an enemy who had been naturalized, or who was employed in the service of a neutral Power, should enjoy the rights of a neutral.³

3. With respect to the manner of conducting legal proceedings in

¹Martens, *Merkw. Fälle*, vol. ii, pp. 35-8. Here also we may refer to the treaties of Russia with Denmark, and of the United States with Holland (1782), of Russia with Austria (1785), also with France, the kingdom of both the Sicilies and Portugal (1787), and of Prussia with the United States of America. Martens, *Recueil*, vol. iv, pp. 72, 196, 229, 315.

²See particularly treaties of United States with Holland* (1782), with Prussia (1785), and of England with France (1786).

³See treaties mentioned in notes, pp. 64, 65. In the treaty between England and France (1786) we find the following rules relating to Prize Courts. "Si quelque navire marchand se trouvait dépourvu de ses lettres de mer ou de certificat, il pourra être examiné par le juge compétent, de façon cependant que par d'autres indices et documents il se trouve qu'il appartienne véritablement aux sujets de l'un des dits souverains, et qu'il ne contienne aucune marchandise destinée pour l'ennemi, il ne devra point être confisqué mais sera relâché avec sa charge."

prize cases, the treaties of 1783-93 contained but few rules; they only require that cases between privateers and neutrals should be settled impartially, without delay, and in conformity with international justice. Should the judgment be considered unjust or oppressive, diplomatic agents are entitled to intervene in behalf of their fellow-countrymen, and to bring the case before the Court of Appeal.¹ A privateer, having captured a neutral ship without sufficient grounds, is held liable to damages to the injured party; but unfortunately the amount of compensation is nowhere determined in treaties; Holland and the United States alone have laid down carefully defined rules on the subject, namely, that the privateers shall repay all the legal expenses, and a percentage for *lucrum cessans* to the owner, and all persons who may suffer from the illegal capture.² All the above-mentioned treaties are imbued, so to say, with one and the same spirit, having a tendency to lessen the cruelties of maritime war, to put an end to the illegal plunder of neutrals by privateers, and to mitigate the harsh decrees of prize courts. It is remarkable that the authors of the "armed neutrality," even when belligerents, adhered to their principles. As an instance we may cite the ordonnance of the Empress Catharine on privateers (1787), issued on the occasion of the war with Turkey, which, being in perfect conformity with the declaration of the Empress in 1780, is, according to the opinion of Hautefeuille, one of the most liberal decrees ever published by a belligerent. The Empress prescribed to privateers the courtesy due to neutrals, and greatly restricted the right of visitation, confining it to particular seas.³ Sweden in the

¹In addition to the treaties already cited, reference may be made to that between Denmark and Genoa (1789), in which the influence of the "armed neutrality" is apparent. Martens, *Recueil*, vol. iv, p. 438. Denmark and Genoa imposed upon their consuls the duty of defending neutrals in the prize court, and appointed advocates for the same purpose; it was also agreed, when the evidence of neutrals and captors was conflicting, to give the preference to the former, "parceque l'intérêt du capteur doit toujours rendre ses accusations suspectes." This remarkable rule, however, does not occur in other treaties.

²By the clauses of this treaty the rights of neutral merchants in the prize courts are fully secured. Martens is perfectly right in observing, that neutral merchants can not be considered as compensated by the mere payment for the cargo plundered and injured, but are also fully entitled to an indemnity for what might have been gained, if the vessel had in due course reached its place of destination (*lucrum cessans*). *Essai*, s. 30, p. 95. Other treaties abrogate some unreasonable contributions imposed on neutrals, as, for example, fees or other duties. Martens also gives a full account of the conventions relating to prize jurisdiction of that time, and of the decrees on that subject.

³Martens, *Recueil*, 336. However it is to be observed that in that war the Greeks, and not native subjects of Russia, received letters of marque from the Empress. In the first war with Turkey (1767-74) Russia had not recourse to privateering. Martens, *Recueil*, vol. ii, pp. 32, 33; *Essai*, p. 46, s. 9.

decree of 1788 also sanctioned the principles of the "armed neutrality," and conformed her prize jurisprudence thereto.¹ The declaration, however, of the court of St. Petersburg, published at the end of the war with Sweden (May 6, 1789), was much more extraordinary, for therein the Empress promised the protection and the assistance of the Russian fleet to the merchants of all neutral nations.² Thus the freedom of neutral commerce became every year more prevalent in Europe, and naval wars were greatly mitigated. Some States found it even advantageous to put an end to privateering. The first attempt to that effect was made by the United States of America in a treaty with Prussia, in which also the right of seizure of war contraband was modified into that of preemption (*droit de préemption*).³ The question of the abolition of privateering was subsequently taken up by France.⁴ Unfortunately these humane projects were not destined to be carried into effect, for in 1793 there commenced in Europe a long revolutionary war, which threw all international relations into confusion, almost annihilated the political institutions of Europe, and shook to its foundation the very idea of neutrality.

¹Martens, *Recueil*, vol. iv, pp. 394-410. In this decree Sweden admitted the immunity of the neutral flag, and exempted from visitation ships proceeding under neutral convoy. Only in the definition of war contraband does the decree not altogether correspond with the declaration of 1780; for instance, it includes in the list of prohibited goods, besides arms and ammunition, money, but the Swedish king, in consequence of a protest from several powers, subsequently revoked this decree, and returned to the principles of the "armed neutrality."

²Martens, *Recueil*, vol. iv, p. 428.

³The treaty of 1785 was concluded by Franklin, the well-known opponent of privateering. In his opinion, this institution ought to be put an end to for the good of mankind and the maintenance of peace. The custom of plundering merchant ships is a remnant of piracy, it produces no benefit at all. At the commencement of a war, indeed, some rich ships may fall into the hands of the captors and be taken by surprise, but the enemy soon becomes more careful and protects the commerce of his subjects by strong convoys. Consequently in the course of war, as the number of privateers increases so does the value of the captures diminish.

⁴In 1792, the French diplomatic agents were instructed to ascertain how far foreign nations were inclined to abolish privateering. Unfortunately the political circumstances of that time prevented any sympathy or confidence being placed in the intentions of France. With the exception of the Hanseatic Towns (which made no use of privateers) not a single state of Europe responded to the question proposed. See Büsch, 290, 3; Ortolan, *Diplomatie de la Mer*, vol. ii, p. 56; Cauchy, *Du respect de la propriété privée sur Mer*, annexes, N. 1-4. As to the United States, they answered the French communication favorably, though rather in a vague manner.

ADDITIONAL NOTE BY THE AUTHOR

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In a juridical work like the present, the "armed neutrality" is chiefly considered in its effects upon treaties and international customs; as to the political events which led to its foundation they are recorded by some contemporaries of Catharine II. It would be long, and even useless, to enumerate here all the books and pamphlets which give or pretend to give information on the origin of this celebrated league. As the chief authorities upon the subject may be cited the memoirs of M. Dohm (*Denkwürdigkeiten meiner Zeit*, Hannover, 1814-15-18); Count de Goertz (*Mémoires sur la Neutralité armée*, Bâle, 1801, Paris, 1804), and Sir James Harris' (Lord Malmesbury) Diary, London, 1845.

These diplomatists, though differing from each other in some details, look upon the whole affair nearly in the same light. According to their opinion, the declaration of 1780 arose out of a court intrigue, aimed at the influence of Prince Potemkin, the great favorite of the Empress, and had no other object than to ruin his political power. Catharine herself seemed to have been almost an involuntary agent in the hands of Count Panin, the minister of foreign affairs, with whom the scheme originated. The defense of neutral rights furnished this statesman with a good pretext for overthrowing his rival. By giving full credit to this testimony, and deriving all our information from the same source, it might be supposed that the authors of the "armed neutrality" hardly knew what they were about, and that they only became fully aware of the importance of their acts from subsequent events, and when almost the whole of Europe had acceded to the principles of 1780. Now all this story seems to us, if not a pure invention, at least a great misrepresentation of the facts. The truth is that the success of the Russian policy having excited great envy, the open and secret enemies of the "armed neutrality" had recourse to every kind of obloquy and literary abuse, in order to discredit it in the eyes of the world. Consequently the most absurd rumors, about the authors of the coalition as well as their motives, were circulated abroad, and have been repeated up to the present time. However difficult it would be to refute these calumnies without access to the state archives, where the whole correspondence relating to the subject is deposited, we humbly submit to our readers the following considerations, which are founded upon documentary evidence, or derived from Russian historians.

The first circumstance to be noticed is, that the contention between Prince Potemkin and Count Panin had no such signification, with reference to the "armed neutrality," as foreign diplomatists seemed to imagine. The principal question in dispute was the English alliance; in fact, the first of these statesmen strongly recommended his sovereign to take part in the American war; the second, on the other hand, advised her to stand aloof from the great conflict, wherein she would

be no gainer, and might lose the advantage of being appealed to as an impartial mediator. As long as the Empress hesitated to avow her decision on the best course to be pursued, the opportunity for a neutral league was necessarily delayed. It may be also easily understood why the cabinet of St. Petersburg kept all these proceedings a secret from the English minister, whose connections with Potemkin were probably as well known to Catharine as to the minister for foreign affairs. It must not be supposed, however, that the declaration of 1780 burst forth as the feat of a skilful courtier, devised to injure a rival. We have every reason to believe that this act had been long in preparation, before the Empress found a favorable opportunity for offering it to Europe, as the most efficient measure against the violence of belligerents. Some diplomatic papers of that time, published from the state archives of St. Petersburg a few years ago (see the *Maritime Magazine*, or the *Morskoi Sbornik* for 1859, Nos. 9-12), prove that the seizure of Russian merchandise near Cadiz by Spanish cruisers was only the last of many grievances reported to Catharine by her ministry. From the very beginning of the war the atrocities of privateers induced the Russian Government to take serious measures for the protection of commerce. Thus in 1778, when American cruisers made their first appearance in the northern seas, the Empress gave orders that a squadron should be stationed near Archangel to convoy English traders. Soon afterwards Catharine represented to Denmark and Sweden the urgent necessity of common action against cruisers in the Baltic (*Lettres du Comte Panin à M. Sacken, Chargé d'Affaires à Copenhague, 16 Août, 1778, et note du Comte Bernstorff, 28th Sept., 1778*). It is remarkable, however, that Count Panin, by recommending the Empress to declare in London and Paris her firm intention to close the entrance of the northern sea to all cruisers, prevented at that time all further proceedings against belligerents, and this declaration appeared to him quite sufficient for the purpose. In the confidential report addressed by the Count to Catharine, and approved by her on the 22d Dec., 1778, we observe that his intentions were then not so hostile to England as Sir James Harris expected. The dangers of a breach with Great Britain are therein set forth without reserve. The Russian minister submits to his sovereign the future line of conduct to be adopted towards belligerents. In his opinion the question of neutral rights, being very intricate, great moderation and circumspection were requisite to be used in dealing with it. He strongly recommends that Russia should attend to her own interests, and avoid a close alliance with her Baltic neighbors upon that question. Thus a cooperation with Sweden appears to Count Panin not desirable for many reasons. "The Swedish policy of defending neutral rights," says he, "may cause us great difficulties, and involve our government in a disastrous war with the greatest maritime Power of Europe." Accordingly, when the cabinet of Stockholm in 1779 made the first proposals for a treaty to that effect, they were declined by Catharine. In short, the documents we have cited here give us no indication whatever that Count Panin was the real author of the

"armed neutrality." On the contrary, the spirit of the declaration of 1780 seems not to be in accordance with his former views as well as with his general conduct as minister for foreign affairs. We are more inclined to think that the new scheme of neutral policy was originally devised by the Empress herself. The first precedent for it she might have found in the convention of 1759 mentioned before. It must be added that her various reading and intercourse with foreign diplomatists made her better prepared to conduct the foreign affairs of Russia, according to her own enlightened views, than, like some other sovereigns, to follow the advice of her council. In fact, the political talents and literary accomplishments of Catharine are so well known, that they afford sufficient grounds for our adhering to that opinion. Many important state papers were the production of her mind and pen. The authenticity of her correspondence with Voltaire is undoubted, and was never disputed. The same may be said of the "General Instruction for the Government of the Empire." This monument of the legislative wisdom of the Empress, having been translated into foreign languages, is as well known in Western Europe as in Russia. But the most improbable part of the story about the origin of the "armed neutrality" is that Catharine when signing the declaration did not understand its meaning. Whatever her faults might have been, she was perfectly able to appreciate the consequences of her political acts. It must not be forgotten that Sir James Harris puts into the mouth of one of his confidants the following remarks upon this new plan for the defense of neutral rights: "the declaration is the child of the Empress' own brain." The five articles were sent in the rough draft to Count Panin, who made no addition to the original; see *Lord Malmesbury's Diary*, vol. i, p. 266. The Count himself, who very soon fell into disgrace, is reported to have abjured all participation in devising the principles of 1780. When questioned upon this point he once said, "they who think that anybody suggested to the Empress the idea of a neutral league, or has now power enough to put it out of her head, are greatly mistaken." *La Cour de Russie, il y a cent ans*, Berlin, 1858, p. 253. All these facts seem rather to corroborate our views than otherwise. However it may be, we sincerely hope that the absurd fables about a court intrigue will fall to the ground, as soon as the historical truth, contained in the diplomatic documents, shall be fully brought to light. May this be done by future inquiries. Nothing but a careful study of the whole reign of Catharine can lead impartial men to safe conclusions upon the "armed neutrality." It will then be easily admitted that its origin is due as much to the natural course of events as to the liberal tendencies of the Russian Empress, and the philosophical spirit of her time.

PERIOD IV

From 1793 to 1815

The continental governments having, as we have seen, agreed on the fundamental principles of prize jurisprudence, had entertained the idea

of drawing up a code of neutrality; but these intentions, originating in the declaration of 1780, were frustrated by the breaking out of the French Revolution. The political events which occurred in France, and afterwards in other countries, not only prevented the further extension of the "armed neutrality," but afforded a pretext to the belligerents for resuming their former harsh proceedings. Consequently international treaties having been rescinded in the midst of the general commotion of Western Europe, Admiralty Courts began to oppress neutral merchants under the authority of the severe instructions of the belligerents, and privateers not only refused to acknowledge the immunity of the flag, but even disavowed the doctrine of the *Consolato dei Mare*. In vain the northern Powers endeavored to form a permanent coalition for the protection of their commerce. The league they entered into (1800) only continued a few months, and failed of attaining the success which attended the first armed neutrality at the time of the American war. By the treaty of St. Petersburg (1801) the allies even made some concession to England, and considerably modified the principles of Catharine II. In general, during the French revolutionary wars, the power of the neutral governments diminished, and England returned to the system of the Middle Ages without opposition. At the end of the 18th century the decisions of Sir Wm. Scott (afterwards Lord Stowell), supported by the British navy, were enforced on neutrals. The English Government, however, failed in attaining an absolute supremacy at sea. When Napoleon established the continental system (1806) Sir Wm. Scott was obliged to give up the rules of English practice, which he had invariably followed before. In the course of time the belligerents, attacking one another with retaliatory measures, proceeded to the last extremities, and declared neutral commerce unlawful, and even criminal in their eyes. In this manner, the very idea of neutrality was, so to say, repudiated, and privateers as well as prize courts were converted into instruments of commercial inquisition. Such are the final results of this destructive period. In order to define them more accurately, we propose to direct our attention to facts¹ and to lay before the reader: 1. The successive modifications of the principles of 1780. 2. The prize law of England and France under Sir Wm. Scott and Portalis. 3. The irregular character of privateering and prize proceedings at the period of the continental system.

¹Compare generally Comte de Garden, *Histoire de Traités*, vol. vi, pp. 301-381; Wheaton, *Histoire du Droit des Gens*, vol. ii, pp. 13-106.

The decree of the year 1792, according to which France renounced privateering, was not carried out. Having declared war against Great Britain the National Convention issued letters of marque, and accordingly many small vessels were dispatched for the purpose of plundering ships engaged in commerce. The former laws, however, respecting maritime prizes, and consequently the ordonnances of the year 1778, were confirmed, and privateers received instructions to respect the immunity of the flag.¹ In the meantime, England not only refused to adopt the principles of the "armed neutrality," but skilfully took advantage of circumstances, in order to add to the severity of maritime warfare. Observing that the enemy suffered for want of provisions, she adopted what might be called a system of famine (*système de famine*), namely, entered into conventions² with the principal Powers of Europe in order to forbid the importation of corn and food into the French ports, and the carrying on of any intercourse with France. To counteract these measures the National Convention had recourse to retaliation, and by the decree of May 9th, 1793, enjoined cruisers and privateers to seize neutral vessels destined for England, laden with corn or provisions, or freighted with English merchandise. By this decree English property was declared lawful prize, and even neutral cargo, subject to the right of preemption (*droit de préemption*) on the part of the French Government. These arbitrary rules were to remain in force until the interested Powers obtained from England a strict observance of the rights of neutrality. A few exceptions were made in favor of Denmark, Sweden, the United States of America, and other governments with which France had treaties of commerce.³

For the purpose of meeting this ordonnance of the Convention, England extended still further the right of preemption, had recourse to a stricter system of blockade, and gave to privateers such instructions against neutrals as authorized them to stop with impunity all merchant vessels.⁴

¹See the French ordonnances respecting privateers and prizes which were published at this time, Martens, *Recueil*, vol. v, pp. 376-400; vi, pp. 752-776; Lebeau, *Nouveau Code des Prises*, iv. (Paris, an IX.)

²Martens, *Recueil*, vol. v, pp. 439, 473, 483, 487.

³See Hautefeuille, vol. iii, pp. 276 *et seq.*

⁴Martens, *Recueil*, vol. v, pp. 596-605. Besides the Orders in Council of the 8th June and 6th Nov. 1793, according to which England extended the right of preemption to all neutrals, and made lawful prize the produce of French colonies, privateers received also secret instructions very oppressive to general commerce. See Comte de Garden, vol. vi, pp. 324, 330.

The Danish commerce suffered particularly at this time. Up to the 19th August, 1793, 189 Danish vessels had been seized, and the compensation promised them for provisions was only very reluctantly paid, and after much delay. In vain Count Bernstorff attempted, in his celebrated memorial, to show to the cabinet of St. James, that the neutral Powers had nothing to do with the peculiar character of the war, and that, according to the principles of independence, they ought to enjoy undisturbed the advantages of commerce, in the midst of the conflict. To this the English Government replied that France had placed herself out of the pale of civilization; that no Power could be considered neutral with reference to her; and that all nations were bound to take part against her.¹

Having exhausted in conference all power of persuasion, Denmark proceeded to arm her fleet, and concluded with Sweden an alliance for the protection of commerce (1794).² About the same time the conduct of England provoked the resentment of the United States of America. Jefferson, the then secretary for foreign affairs, resisted energetically the violence of the privateers, and protested that the sale of agricultural produce was always considered free; that the belligerents were not entitled to extend the catalogue of contraband on their own authority, and added that the submission to that authority would amount to the surrendering into the hands of one nation the commerce of the world. Yielding to these remonstrances England consented to the appointment of a mixed commission, to examine the claims of American subjects to compensation; as to the exertions of the United States in favor of the immunity of the neutral flag, they remained unsuccessful. By the treaty of 1794 both Powers reverted to the principles of the *Consolato del Mare*, and extended the catalogue of contraband to some articles *ambigui usus*.³

Having made such concessions to the cabinet of St. James, the United States had no right to expect that any greater regard should be shown to their flag by the other belligerents; in fact, even before the conclusion of the treaty to which we have alluded, France had complained that the Americans permitted the English to seize and condemn as lawful prize the merchandise of their own subjects; but when the news that the treaty of 1794 was signed reached Paris, the French Government im-

¹See the diplomatic papers on this subject in Martens' *Causes Célèbres*, vol. ii, pp. 333-63; *Recueil*, vol. v, pp. 569, 593.

²Martens, *Recueil*, vol. v, p. 606.

³*Ibid.* 640; Wheaton, *Historie*, vol. ii, pp. 39-47.

mediately had recourse to reprisals, and adopted on their side towards the Americans the principles of the *Consolato del Mare* (Decree, March 2, 1796). In justification of which measures the Directory alleged the following reasons 1. According to the treaty of 1778, between France and the United States, it was laid down that all privileges granted by one of the contracting parties in favor of a third Power should belong to the other party. 2. That it would be unreasonable to expect them to observe the immunity of the flag with respect to those nations who renounce it of their own accord. After this decree the cabinet of Washington lost no time in breaking off commercial relations with France.¹

Thus the example of one belligerent acted upon the other, and the old system of the *Consolato del Mare* took the place of more liberal principles of neutral commerce. The obstinacy of the belligerents increased every year, and to all the terrors of unbridled privateering was added oppressive procedure in the prize courts. While Marriott, in England, was inclined to support all the abuses of belligerents,² the French Government referred cases, relating to maritime prizes, to the ordinary courts of law; and even conferred a prize jurisdiction on their consuls in neutral ports. The partiality of these new judges reached its greatest height at the end of the 18th century; they called upon neutral ships to produce all papers required by the French regulations, without paying any attention to the difference of European laws in that respect, and considered every ship, which had once belonged to the enemy, lawful prize, though she had afterwards been transferred to a neutral by a regular bill of sale.³

¹Wheaton, *Histoire*, vol. ii, pp. 50, 51; Martens, *Recueil*, vol. vii, p. 376. Friendly intercourse between France and the United States was reestablished by the *Morfontaine Treaty* in the year 1800. Martens, *Recueil*, vol. vii, p. 484. By this convention both parties reverted to the former liberal principles of neutrality, and the immunity of the neutral flag was again acknowledged.

²This judge was the great opponent of neutral commerce; he did not consider the English customs sufficiently severe in checking it, and laid down in the year 1794 an extraordinary rule, according to which neutral nations were only permitted to carry their own produce, and not that of other countries. Jacobsen, *Seerecht*, i, preface. Marriott defended this arbitrary limitation of trade with the enemy, on the principles of the Navigation Act, which was then adopted by many states in imitation of England.

³Several French jurists then, and afterwards some members of the Directory itself, protested against this unusual change introduced into prize practice (*Lebeau*, vol. iv, pp. 345, 403-415.) Portalis justly says, "C'était une grande erreur d'avoir attribué la connaissance des prises aux tribunaux ordinaires. Quand il s'agit de la justice des nations entre elles; quand il s'agit des droits de la guerre et de leur exécution; quand il faut peser les traités, décider si une nation est amie ou neutre, on est étonné sans doute de voir intervenir une autre autorité

In the year 1798 the Directory published two new decrees, unprecedented in history ; one of them shortened prize proceedings to such a degree that there was not time enough for neutrals to bring forward their evidence ; the other introduced a rule, whereby the character of the ship was to be determined by the cargo, that is, it declared lawful prize all neutral ships in which were found any article of English manufacture.¹ By the introduction of these decrees, international trade ceased to have free course ; visitation degenerated into abusive search, and privateers became pirates. In answer to the question of neutral merchants, what was to be considered war contraband ? the French privateers replied, "all that is worth seizing" (*tout ce qui vaut la peine d'être pris*).

It appears, then, that the principles of the "armed neutrality" were abandoned during these revolutionary wars. In fact, the United States of America, on the conclusion of a new treaty with Prussia in the year 1799, even proposed to abolish the immunity of the flag ; or, at least, to postpone its acknowledgment to a more favorable time.² Only Denmark and Sweden adhered to the traditions of their policy, and, in order to protect their commerce, resumed the practice of making use of convoy. This proceeding was resisted on the part of Great Britain, and, in a short time, produced a violent collision.³ Both the neutral powers were already on the point of yielding to the English Government, when they found an energetic supporter in the Emperor Paul I. Having been disgusted with the violent conduct of the belligerents, he published, August 16, 1800, a declaration for the purpose of re-

que celle du gouvernement." According to the custom of all governments prize jurisdiction belongs to special courts, established for the purpose. Pritchard, *Digest*, vol. iii, pp. 163, 412 ; Wildman, *Institutes*, vol. ii, pp. 163, 361. The appointment of prize judges in neutral ports was also an anomaly contrary to international law ; besides, the consuls, to whom the Directory gave jurisdiction in these cases, were, according to Büsch, often part owners of the privateering vessels, and were consequently interested in the condemnation of the neutral merchant. Büsch, *Das Bestreben der Völker*, S. 393.

¹See Comte de Garden, vol. vi, pp. 335-337 ; Robinson, vi. Coll. 33, not. ; Büsch, 332-336, 394-411 ; Jacobsen, *Seerecht*, 69 ; Martens, *Recueil*, vol. vi, p. 398. In a very short time after the publication of these decrees there were confiscated more than 300 neutral vessels, so that merchants did not dare to undertake a voyage, excepting under the protection of convoy.

²Wheaton, *Histoire*, vol. ii, pp. 55-76 ; Martens, *Supplément*, vol. ii, pp. 227. However the right of preemption of war contraband was confirmed in the new treaty. It includes, also some liberal interpretations of prize law. See articles 14, 16, 21, 23.

³Martens, *Erzähl*, vol. i, pp. 299, 302 ; ii, pp. 39-58 ; Wheaton, *Histoire*, vol. ii, pp. 76-83.

establishing an armed neutrality; and, finding Denmark, Sweden and Prussia favorable to his views, signed, in conjunction with them, on the 4/16 December, 1800, the memorable convention, in which, in addition to the principles of the Empress Catharine II, there were laid down the following rules, as being in conformity with international law.

1. Blockade is only reputed to be broken by neutrals when, disregarding the warning of the belligerent, they enter the blockaded port by force or fraud. 2. Neutrals under convoy are free from visitation; the declaration of the officer in command of the convoy to be considered sufficient.¹

Unfortunately the second armed neutrality was not so successful as might have been expected. The northern coalition did not last long, and was put an end to by the bombardment of Copenhagen and the death of the Emperor Paul.²

On the succession of Alexander I to the throne of Russia new prospects of peace opened to the world. He proposed to the cabinet of St. James to hold a conference, which should lay down the fundamental principles of neutral commerce; he also promised to invite the Danish and Swedish Governments to accede to them, and, in fact, on the 5/17 June, 1801, there was signed between Russia and England a new convention, in which both parties made some important mutual concessions; the greater part however of the regulations of the armed neutrality, such as the definition of war contraband and the free access of neutral merchants to the ports of the belligerent, remained unaltered. With respect to colonial trade, European merchants were placed on an equal footing with the subjects of the United States of America, that is, obtained the right to import from the enemy's colonies goods for their own use. But the change in the definition of blockade, though dependent on one word (*or* instead of *and*), seemed to be more important.³

¹For the acts relating to the second armed neutrality, see Martens, *Supplément*, vol. ii, pp. 344-486; and Baron Carl Martens, *Nouvelles Causes célèbres*, Leipzig 1843, vol. ii, pp. 176-272; see also Miloutine, *Hist. of War of 1799*, a work of the present Russian secretary of war at St. Petersburg, published in the Russian language. He also enters into the history of the second armed neutrality.

²Of treaties concluded under the second armed neutrality we can only refer to that between Russia and Sweden, 1st March, 1801. Martens, *Supplément*, vol. ii, p. 307.

³Lord Grenville himself says in his speech that in the armed neutrality it was required that blockading ships should be in sufficient number, "*and stand near the port*;" on the contrary, in the convention of 1801 this *and* was changed into *or*. Lord Grenville seems to attach much importance to this alteration, and to the manner in which the treaty was drawn up. V. Subst. of Speech, Nov. 12, 1801, p. 82-3, Lond. 1802.

Ships under convoy were only exempted from the visitation of privateers. The principle that the flag covers the cargo (*le pavillon couvre la cargaison*) was also rescinded on the condition that enemy produce and manufactures (*marchandises du crû ou de fabrique de l'ennemi*), purchased by neutral subjects and laden as their own property, should be free. As additional articles to the convention some clauses relating to irregularities and defects in prize practice were introduced. 1. The contracting parties gave diplomatic agents the right of protesting against unjust decisions, and of bringing the case before the highest Court of Appeal. 2. Without the consent of the Admiralty judge it was forbidden to unlade and sell the property in dispute prior to its being adjudged lawful prize. 3. If a ship were arrested without sufficient cause it was stipulated that for every day's delay compensation should be paid by the privateer.¹

In the following year the St. Petersburg convention was after some hesitation accepted by Sweden and Denmark, but they gained little advantage by this vacillating policy, as Great Britain paid no attention to the observance of the provisos she had entered into, and finding the convention too unfavorable to her interests used every effort to interpret it according to her own views.² Sweden soon afterwards, yielding to the demands of the cabinet of St. James, signed a new convention with England in 1803, wherein the catalogue of war contraband was considerably enlarged.³

¹The convention of 1801 is inserted in Martens.

²See a curious pamphlet by Jacobsen, "*Versuch eines Commentars zu den Russischen Beschwerden über die Beeinträchtigung des Russischen Handels durch England.*" Altona, 1808. In illustration of the manner in which England interpreted the convention of 1801, we quote from this work the following facts. When the members of the opposition, Lords Grenville and Howick, observed in parliament that the convention abandoned the colonial and coasting trade to neutrals, the minister, Lord Sidmouth, answered, that this was not evident from the words of the treaty, and that the contracting parties might enter into a new arrangement about it. As little foundation was there for the statement of the English ministry, that the neutral powers had shown their confidence in the impartiality of the British Admiralty Court, by declining to insist upon any conditions in favor of their own subjects; this is indeed refuted by the supplementary articles of the treaty. Sir William Scott also asserted that the convention was only applicable to Russian ships, and not to Russian produce found on board neutral ships. In that case he followed the precedents of English practice; according to this interpretation, hemp, masts and some other articles, which according to the treaty were not reputed to be contraband, were pronounced by the English judge to be lawful prize, and that even in those cases in which the legality of the neutral commerce did not admit of doubt. Complaints were also made of delay in the proceedings, and that cases which might have been disposed of in six months were protracted by the court for two or three years.

³Martens, *Supplément*, vol. iii, p. 525.

KLEEN: *Lois et Usages de la Neutralité*. Paris, 1898.

Rikard Kleen. Scandinavian publicist; born in 1841; studied at the University of Upsala; attaché of the ministry of justice in 1863; attaché of the legation of Sweden and Norway at Turin, and later at Florence; chief of division of ministry of foreign affairs at Stockholm; secretary of legation at Vienna; member of the Institute of International Law; member of the International Sanitary Conference at Vienna. His publications include *Droit naturel* (*Naturrätt*), 5 volumes, 1883-5, *Sur la contrebande de guerre* (*Om Krigskontraband*), 1 volume, 1888, and *Lois sur la neutralité* (*Neutralitetens Lagar*), 2 volumes, 1889-91.

Volume I, page 20.—In reference to the question of neutrality the year 1780 ushered in a new era which may be regarded as the close of the reign of the *Consolato del Mare*. It was a period of transition to the new maritime law introduced by the Paris Congress of 1856. This period is characterized by the endeavors of the States at peace to put an end to the uncertainty regarding the rights and the duties of neutrals, to fill in the gaps of the regulation of these rights and duties and to form a union for the purpose of opposing the arbitrary way in which the greatest maritime Power was treating the neutral nations. It was at this time that there manifested itself that remarkable movement against the oppression of a despotic marine, a movement whose initiative was due to the alliance of the Northern Powers, but which was also strongly supported by the insurrection of the great transatlantic colonies against British domination. The American war of independence was a struggle like unto that of the Baltic countries against their common oppressor. The colonies were forced, by reason of the identity of interest and feelings, to take sides with the neutrals against England.

During the North American war of independence, discontent awakened by the exacting pretensions of the great maritime Powers, burst out at last, and the general sentiments of insecurity produced a violent reaction. The less powerful States realized that they had to form a union, and to be the better able to oppose abuses, the first condition was to reach an understanding with regard to the essential points. As a result there was formed in 1780 the famous so-called "Armed Neutrality" between Russia, Sweden and Denmark, whose object it

was not merely to determine the just and reasonable principles of neutrality and to rally round them all other governments, but to defend also by armed force any attack upon their rights.

The Russian Government which was joined in this force by the Scandinavian States, formulated the new rules. These rules were part of a declaration which on February 28, 1780, was transmitted by the St. Petersburg ministry, in the first place to the great western maritime Powers, England, France and Spain, and later to the rest. The following five points appeared therein as the future principles of neutrality:

1. Neutral vessels may freely navigate from port to port and along the coasts belonging to the belligerent States without being detained on their course;

2. Enemy merchandise is free under the neutral flag, excepting war contraband:

3. To determine what shall be regarded as war contraband, reference is made to articles 10 and 11 of the treaty concluded on June 20, 1766, between Russia and England, which treaty shall have obligatory force with regard to all the belligerents.¹

4. No port shall be regarded as blockaded so long as there is no real and effective danger in entering the same, that is to say, so long as it is not surrounded, by the Power which pretends to forbid entrance to it, by means of stationary and sufficiently nearby vessels.²

5. These principles are to serve as rules in the procedures and decisions of the Prize Tribunals.³

As may be judged from this, the declaration does not in its integrality and in clear terms establish the principles set down in the Utrecht treaty that the quality of the vessel determines the quality of the cargo. To the second proposition that "enemy merchandise is free under neutral flag" there is not joined the correlative disposition that "neutral merchandise is seizable under enemy flag." This was

¹The contraband articles specified in this treaty are almost all (excepting saltpeter, sulphur, saddles and bridles) of such a nature as fits them specially to war use. The list marks therefore a step in advance. It was furthermore agreed that when a neutral vessel was transporting such articles, such quantity of war ammunition as was deemed necessary for the needs of the vessel itself should be regarded as free and exempt from confiscation.

²This rule was a protest against fictitious blockades.

³An additional article declares that the Baltic Sea was to be regarded as closed waters within which acts of hostility were forbidden.

also the first time when the said two propositions which had hitherto been usually joined, were no longer found side by side. On the other hand, as nothing expresses the intention of separating them, it was concluded that the armed neutrality probably meant purely and simply to renew the Utrecht principle in this regard. There is no lack of good reasons in support of this interpretation. It is a fact that in the time when the armed neutrality was established, the general practice on the seas was to leave property free when under the neutral flag, with the reservation of the right to seize in the contrary case neutral property under enemy flag. But, if it had been the intention of doing away with this last mentioned right, though its presumed condition was given form of law, mere reflection would have required an explicit stipulation upon this point. Moreover, peace treaties and other remarkable conventions that have been concluded since 1780 contain anew the two propositions side by side, in exact conformity with the Utrecht rule.

The declaration was transmitted to the neutral governments with the invitation that they adhere thereto. This was done successively apart from Sweden and Denmark which belonged to the original alliance—by Holland, Prussia, Austria, Portugal, the Two Sicilies, and lastly by France, Spain and the United States of America. The contracting powers have all accepted the principles of armed neutrality with the obligation not merely to observe and respect these principles, but also to equip and maintain a fleet to uphold and defend them by acting in concert and in common.

Furthermore, within this more enlarged league, Russia and Denmark form together a more intimate union under the name of "Allies of the armed neutrality." These three Powers agreed to defend their cause in common and jointly, so that an attack directed against any one of them through some violation of the right of neutrals would bring simultaneously the other two to its defense.

As could be foreseen, England alone refused her adhesion to this act which was intended to open up a new phase in the regulation of neutrality by establishing principles that should gradually decrease the exclusive domination of the greatest maritime power. The British ministry explained its refusal on the ground of political maxims which it had hitherto constantly followed, and upon its conventions which, as regards treatment on the seas on the part of the British marine, granted to certain privileged States immunities which the other States did not

enjoy. And to these latter England would for nothing in the world concede the advantage that the neutral flag should protect enemy property.

England alone was however not capable of halting the current of ideas of a neutrality more in conformity with right, ideas upheld by many other nations and even by the new opinion which already began to appear everywhere on the horizon. The modern spirit demanded an international, a distributive and equal justice for all the States, and simplicity, frankness, and clarity in the laws. The principles proposed by the armed neutrality had no other object in view than that of substituting fixed rules in the place of the monetary arbitrariness, an objective justice in the place of the whim of the stronger, the precepts of natural law in the place of the shrewdness of an ambitious policy, and at least a relative security for peaceful navigation in the place of maritime brigandage. In the presence of these irrefutable facts, and in the face of the unity and harmony between the States favorable to this reform, the British Government, while avoiding a real adhesion thereto, was nevertheless compelled to practise a little more moderation in the application of its former rigorous usages. It protested in vague terms, especially against the maxim "the flag protects the merchandise." But it made more than one exception in its favor; it issued instructions to its cruisers enjoining them to proceed with greater prudence toward the neutrals, and to the latter it opened the commerce with the Mediterranean.

The principles of the "armed neutrality" acquired in this manner, if not an exclusive and absolute, at least a decisive, influence over the interpretation of the rights and duties of neutrals during the following period which extended up to the time of the Crimean war. Not all, of course, had been gained by the Declaration of 1780. It provided no protection for neutral property under the enemy flag and did not restrict the right of search. But it put an end to a state of incertitude, of insecurity, and of confusion which, for lack of precise laws accepted by the majority of the States, had controlled ever since the time of the *Consolato del Mare*. Every nation had followed its own special rule, according to the intention of the moment: not any rule had been established on juridical bases as a result of serious negotiations between a considerable number of governments. Though incomplete and defective, the principles of the "armed neutrality" were at least formulated in an exact manner and had been recognized and adopted by almost all the powers of Europe and of America. Faithfully they expressed

the reasons of an international conscience; the motive forces back of them were peace and justice. And lastly, they restricted the pretensions of a single Power of exercising a universal dictatorship unaccompanied by legal sanction and exclusively based upon might. The accord and harmony between the other States, their understanding officially declared and clearly expressed, their demands based upon equity and humanity presented a reassuring guarantee theretofore unknown. It is true that its application could only be of a restricted kind in view of the fact that no serious conflict arising from the divergence of views between England and the States of the League gave to the latter, during the period in question, the opportunity of setting forth the practical consequences of the Declaration. The great significance of the diplomatic act of the year 1780 is rather to be found in the fact that it constitutes a principle and sets forth the expression of a new and more enlightened spirit. Attention had been attracted to the need of a more effective general protection of the right of neutrality, and also to the powerful aid which the reformation of this right could find in the public opinion of the civilized world, because almost all the nations had shown themselves ready to defend more energetically than ever before the interests of the neutrals. After this solemn and collective declaration it was felt everywhere that soon there would rule a better legislation over the conditions in the countries not engaged in war while war was being waged elsewhere, and that the world was on the eve of a new and more liberal solution of the so important questions of the protection of the neutrals against the encroachments of the belligerents. The time of the great reformation in the matter of neutrality may therefore be regarded as having begun with the declaration of 1780, even though the reform itself was to await for some time its subsequent development, and though it had to suffer from the interruptions brought about as the result of abnormal circumstances.

One of these interruptions, the most deplorable and the most violent which threw Europe once more into a state of anarchy which one had been entitled to believe had long since disappeared, was the result of the wars of the great revolution which broke out soon afterward. The violations of the law of neutrality and the abuses of the laws of war reached then such a stage that it would hardly have been possible to maintain the modest reform which had been introduced, and even less to continue to develop the same. France and England surpassed one another in reactionary manifestoes addressed to the rest of Europe

concerning the situation of the neutrals, and the arbitrary decrees of the belligerents reduced these to a state of almost illimited dependency. Each of the two western rivals claimed the right to close the entire continent to its adversary. The principles not only of armed neutrality, but of almost the entire law of neutrality hitherto known and accepted, were disregarded and trampled underfoot. One of the first consequences of this violent reaction was the fact that England could again apply her antiquated principles and compel the weaker States to tolerate them, as long as they were not prevented in this by the terrorism from the opposite side. The rule that the flag protects the merchandise was in fact abolished and as the neutrals could no longer act in common accord,—some being dominated by the conqueror, and others hesitating as to the decision they should take in the face of such overwhelming evidence, while still others were compelled to conclude treaties with England in order to be able to resist the threats of France,—the bond which had held together the members of the league of 1780 was broken, and the union which had made for the unity and the success of other reformatory labors was sundered. They deserted, one after the other, or they avoided coming to a decision, at all events, they did not endeavor to realize their promise to “defend the right of the neutrals by armed force.”

Even at the last moment, when war broke out between revolutionary France and the Allied Powers, the Scandinavian States tried to strengthen the bonds by uniting on the basis of the compact of 1780. But Russia failed in this instance for she felt compelled to accede to the coalition of which England was the soul. And in fear of dividing the forces that were to be opposed to France, the other members of the league of 1780 dared not stand apart from England. Every legal scruple was put aside in the presence of the pretended political necessity of crushing, or at least of throwing back Republican France, which was regarded as dangerous for the peace of Europe. It soon became a fashionable tactic in the policy of sea dictatorship to excuse every violation of the right of neutrals with the pretext that at any price, even at the price of justice and of equity in international relations, it was necessary to prevent the domination of the French Republic. On the other hand, the French Republic put forth analogous pretexts to checkmate Britannic preponderance through violations of the law of neutrality.

Even at the time of the national Convention, the leading powers of the coalition, especially England, had tried to force the Scandinavian States to adopt with regard to France a procedure similar to others, and to prevent their commerce with French ports. They forbade the neutrals to transport thither, not only articles of war contraband, but even articles of prime necessity, such as wheat, food and other like produce. English privateers seized the vessels which carried on the transportation of such articles to France. Fictitious blockades were declared, and vessels which did not observe them were captured. Those vessels bringing produce from the French colonies were likewise declared legitimate prize. Further than that, and independently of its nationality and cargo, England declared legitimate prize any vessel sailing to or from a French port. France, on the other hand, threatened by famine, resorted to violent reprisals. In 1793 she repudiated the principles of 1780 by reestablishing the ancient prize rules which had prevailed before the reign of Louis XV. In virtue of the decrees of the national Convention French privateers captured not only enemy property under the neutral flag, but even any vessel transporting merchandise to England manufactured by or belonging to the enemy, or necessities of life belonging to neutrals but destined for the enemy. According to a law of 1798, the neutral vessel was not to be treated according to the flag she flew but according to her cargo, and in consequence was to be captured if she transported enemy property, and thus especially any object coming from England or from the English colonies was to be regarded as enemy property.

Fortunately, these reciprocal violations of the law of neutrality lasted not longer than the burst of passions loosened by the wars of the Revolution, a proof, moreover, that the oppressed law had never ceased to enjoy a certain degree of respect within the innermost of the consciences and that these continued to uphold the fundamental principles, in spite of the abuses and of the accidental transgressions of this time in almost the whole of Europe is found in the fact that since the encroachments upon the rights of the neutrals began under the national Convention, the Allied Powers deemed it necessary to lay before the neutral states which still insisted upon their rights, such as the United States of America, and the Scandinavian States in Europe, excuses with regard to the irregularities that had been commended, by alleging "the exceptional situation" created by the events which took place in

France and which were of an essential transitory nature. England went so far as to mitigate some of her measures of violence, by incurring exceptional immunities to certain neutral states which desired to remain at peace.¹

The compact of 1780 was broken and its principles no longer observed, since Russia had become the ally of England and in consequence had been compelled to abandon the new laws, so embarrassing to a maritime supremacy. Hence, when a few years later, the Russian Government again separated from England and her allies, and recovered its freedom of action, its first thought was to reconstruct the armed neutrality. The alliance between Russia, Sweden and Denmark was therefore renewed in December 16, 1800, in the name of "second armed neutrality"; and Prussia adhered to it. They returned to the principles of 1780. These principles were not merely reestablished but considerably extended and increased in a liberal and equitable sense. To the five points of the first armed neutrality, the following two were added:

1. A neutral vessel is not guilty of violating the blockade until it has been warned by a war-ship or by a corsair of the blockading Power and it attempts nevertheless to run the blockade either by ruse or by force.

2. When neutral merchant ships are escorted by a neutral warship, they may not be searched, and the declaration of the officer in command of the convoy that there is no war contraband on board shall be deemed sufficient.

The British ministry neglected no effort to break this new bond of neutrality, or at least to annul its consequences, and it was successful. After long negotiations, it again brought about the separation of Russia from her allies; and on June 17, 1801, it concluded with the St. Petersburg ministry a convention by which the Russian Government again abandoned the essential and most important principles of the compacts of 1780 and 1800, especially the one in virtue of which the neutral flag was to protect the enemy merchandise, but England was also forced to make some concessions; so that the armed neutrality, without which these concessions could not have been obtained, has not been wholly unfruitful. Forsaken by Russia the Scandinavian States remained isolated and no longer able to maintain their resistance,

¹Instructions issued in 1793 to English cruisers forbid the latter to seize Scandinavian vessels for violations of the blockade, unless in spite of the warning given them, they had again tried to enter the blockaded region.

they felt compelled to accede to the Anglo-Russian Convention (1801-1802). Prussia alone absolutely refused her aid to these recantation principles solemnly published. But England made wide use of her triumph to induce several other States, one after another, to conclude with her special conventions on the basis of the principles of 1801, which principles, in consequence, became soon afterwards predominant. It may be said that they have been the law of a large part of Europe during the first half of our century, that is to say, in a general way for England and for those which had contracted with her, but also for other states during a certain period and as long as they did not depart therefrom, until at the time of the Crimean war, the legislation upon this matter was again enlarged. The rules of 1801 deserve therefore a mention, although secondary in importance beside those of 1780. They may be summarized in the following articles:

1. Neutral vessels may freely sail to the ports and along the coasts of the belligerent nations.

2. Merchandise on board these vessels is free excepting the so-called war contraband, and merchandise belonging to the enemy; merchandise of enemy origin but purchased and transported by a neutral must in all cases enjoy the benefits acquired by the neutral flag.

3. To remove all doubt as to the nature of articles which constitute war contraband, the contracting parties refer to the treaty of commerce concluded between them on February 21, 1797.¹

4. A port is regarded as blockaded only in case its entrance offers real danger by reason of the number of warships directed to inhibit access to it.

5. Legal action against neutral vessels seized because of founded suspicions or of evidently guilty acts must be taken without delay, and the mode of procedure of this action shall be uniform and strictly legal.

Regarding the search of convoyed vessels, the stipulations of the convention may be summed up as follows:

1. The right of searching merchant ships, owned by subjects of one of the contracting powers and sailing under the escort of a war vessel of their nation, belongs exclusively to the vessels of like rank of the belligerent State and may not be exercised by corsairs.

¹According to this treaty articles of contraband were approximately limited to those which had been specified in the previous treaty between the same parties of June 20, 1766—see above, page 21—, that is to say, few exceptions to those articles *especially* adapted to war uses. This point constitutes therefore a concession of the neutrals.

2. Owners of vessels intending to sail in convoy under the escort of a war vessel must, before being given their ship's papers, present their passports and their sea certificates in the form determined by the treaty to the chief of the convoy.

3. When a convoy is met by a war vessel of the belligerent parties, the latter, unless weather conditions or circumstances prevent, must hold herself beyond cannon range and send a longboat to the convoying vessel to proceed in common to the examination of the papers and certificates showing that the one is authorized to escort such or such other vessels with this or that cargo from port A to port B, and that the other really belongs to the royal (imperial) marine of the nation whose flag she flies.

4. Once the regularity of the papers is established, any legitimate suspicion must be regarded as removed. In the contrary case, and after having been properly and duly requested thereto by the belligerent, the chief of the convoy must stop long enough to permit searching the convoyed vessels.

If after examination of the documents the searcher believes that he has good reasons to detain one or several convoyed vessels, article 5 authorizes him to hand the captain and crew to the chief of the escort who, on his part, may put on board the detained vessels an officer to assist in the investigation, which must take place, without delay, in the nearest port of the belligerent, in the presence of the seized vessel. Article 6 forbids the chief of the convoy to oppose by force of arms any acts ordered by the belligerent commander. If, on the other hand, the latter abuses the power thus conferred upon him, or detains a vessel without sufficient reason, the offended owners of the vessel or cargo must be indemnified.

As appears from this summary, the 1801 Convention, which evidently sought to conciliate England's pretensions and the needs of the union of the North, deviated widely from the principles of the second armed neutrality; and England's pretensions won the day on all principal matters. According to the convention enemy property under neutral flag could again be captured. A violation of the blockade made it no longer a condition that the line be passed *through ruse or through force* after *previous warning* had been given by a vessel of the blockading Power of the state of blockade in the very place of the operation—a condition which would have guaranteed an effective blockade; nor was the *fixed stationing* of the blockading vessels prescribed. Finally, the search of convoyed merchant ships was permitted. Now, these three

points which had been the main matter of England's pretensions and because of which England had protested against the treaty of the armed neutrality, constitute so many retrograde steps in the regulation of the rights of neutrals; and they carried with them the abrogation of the essentials of the liberal principles proclaimed by the league of 1780-1800, to wit: *The inviolability of the neutral flag, the effective quality of blockades, and the abolition of the search of convoys.*

On the other hand, the convention of 1801 contained, no doubt, besides these restrictions, various other provisions favorable to neutrality. It stipulated explicitly the freedom of traffic between the open parts of a belligerent and a neutral, and removed the unjust prohibitions to any commerce with the enemy which were so frequently decreed during the wars of the Revolution. It also limited in a reasonable way the idea of war contraband. And finally, to make the blockade legal, it required a certain number of war vessels which, though the number thereof was left to the subjective appreciation of the belligerents, was nevertheless calculated to exclude purely fictitious blockades. In principle the latter were at least disapproved of.

Thanks to these rather liberal provisions, the convention might have been regarded as a slight step in advance toward the development of neutrality, *if* it had been loyally executed and scrupulously applied. It was certainly the first international act of general interest through which England modified somewhat her ancient pretensions of dictatorship without any regard whatever for the opinions of the other nations. For the first time, the British Government made important concessions to the neutrals; she bound herself by explicitly clear conventional dispositions and to a certain degree broke with her traditional system, followed by all her ministries, in avoiding precise stipulations in order to avail herself of the obscurity and ambiguity of expressions according to her purposes which varied with circumstances, and in order to be able to apply the rules in partial manner toward such or such another people, and in more considerate manner toward this or that nation. It is true that the convention was far behind the armed neutrality with regard to the protection of the right of the neutrals. Nevertheless, it offered at least the advantage, not only of constituting a compact between two adverse parties which theretofore had not been able to reach an understanding, but even of binding by definite laws the greatest maritime power which theretofore had not allowed herself to be bound by anything.

Unfortunately, this advantage of the convention was considerably reduced by the fact that, in large part, it remained a dead letter. England realized ere long that she had granted too much, while the neutrals thought that she had granted too little. Their right had indeed been sacrificed to her. Both parties were dissatisfied with the new order of things, and by all means available they sought to liberate themselves. Ere long, the opportunity to do so presented itself.

MANNING: *Commentaries on the Law of Nations*. London, 1839.

William Oke Manning. English publicist; born in 1809; died in 1878. In 1839 he published *Commentaries on the Law of Nations*. There was then no English treatise on the subject (though there were two by Americans), and Manning's book was noticeable for its historical method, its appreciation of the combination of the ethical and customary elements in international law, as well as for the exactness of its reasoning and its artistic completeness. The book at first attracted little attention, but was gradually found useful by teachers, and was cited as an authority in the courts. The new edition, issued in 1875, was revised and enlarged by Professor Sheldon Amos, with a preface by Manning.

Page 257.—The commencement of the Armed Neutrality of 1780, may be traced to a circular issued by the Russian court to different European powers, dated 28th February, 1780. This document, after setting forth the great tenderness which the Empress had herself evinced in regard to neutral commerce, and the vexations, on the other hand, which neutral commerce, especially Russian, had been subjected to during the existing war, went on to state that her Imperial Majesty felt called upon to take measures to maintain her own dignity and the welfare of her subjects; and that, to prevent future misunderstanding, she had determined to communicate the principles on which she proposed to act, which she did with the greater confidence, as these principles were based on the primitive rights of nations, were such as every nation had a right to insist on, and were such as the belligerent states

could not invalidate without violating the laws of neutrality, and without disavowing the maxims which they themselves had adopted, especially in different treaties and public engagements. The principles referred to consisted of the following provisions:

I. That neutral ships might freely trade from port to port, and upon the coasts of nations at war.

II. That the property of the subjects of belligerent powers should be free on board neutral ships, excepting goods that were contraband.

III. That with regard to contraband goods, the Empress bound herself by what was contained in the arts. X and XI of her treaty with Great Britain, extending these obligations to all belligerent powers.

IV. That to determine what characterises a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the power which is attacking, with vessels stationary and sufficiently close.

V. That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

To support these principles, the Empress added that she had fitted out a considerable portion of her fleet, which she, nevertheless, trusted that the interests of her subjects, or the honour of her flag, would not render it necessary to employ.¹

This Manifesto, with the second article of which we are at present alone concerned, was forwarded to different belligerent and neutral powers. In reply to this communication, France,² Spain,³ and the United Provinces,⁴ immediately expressed their concurrence in its provisions.

But Great Britain never acquiesced in the pretensions of the Russian Memorial, and the reply of our court to the Russian communication stated, that "his Majesty hath acted towards friendly and neutral powers according to their own procedure respecting Great Britain, and conformably to the clearest principles generally acknowledged as the *Laws of Nations*, being the only law between powers where no treaties subsist, and agreeably to the tenor of his different engagements with other powers, whose engagements have altered this primitive law, by mutual stipulations proportioned to the will and convenience of the

¹De Martens, *Recueil*, vol. iii, pp. 158-160.

²*Ibid.* 162.

³*Ibid.* 164.

⁴*Ibid.* 168.

contracting parties." that precise orders had been given respecting the flag and commerce of Russia, according to the Law of Nations and the tenor of our treaty of commerce; that it was to be presumed that no irregularity would happen, but that otherwise redress would be afforded by our courts of Admiralty, judging according to the Law of Nations, "in so equitable a manner, that her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses."¹

Negotiations subsequently took place between some of the Northern Powers, explanatory of the assistance that was to be afforded in case the concurrence in an association should draw down an attack upon one of the confederates.² In July, 1780, Denmark, and afterwards Sweden, forwarded circulars to the courts of London, Paris, and Madrid, stating their intention to abide by the five articles of the Russian Manifesto, which were copied *verbatim*, with the exception of the alteration of the date of the respective treaties defining contraband. In reply to these circulars France and Spain returned answers highly applauding the proceedings of the Northern courts, and stating their acquiescence in the provisions of the new arrangements.³

But Great Britain appealed to the faith of treaties, of which the conduct of Denmark and Sweden was in direct violation. In the British Note to Denmark, dated 25th July, 1780, it was stated that the Danish commerce had always been treated by us in conformity with the treaties which had subsisted between the two nations for upwards of a century (the treaty of 1670 being still in full force), that "their reciprocal rights and duties were evidently traced by these solemn engagements, which would become illusory could they be changed otherwise than by mutual consent. They subsisted at the present moment in their full force, and, equally obligatory on each of the contracting powers, they formed an inviolable law for both." Our government had always followed their stipulations, and expected the same conduct from the court of Denmark.⁴

In the same manner, in the British reply to the Note of Sweden, it was stated that the articles of our treaties with Sweden offered a direct answer to her novel pretensions. The twelfth art. of our treaty of

¹De Martens, *Recueil*, vol. iii, 160, and Annual Register for 1780, p. 115.

²For the notes between Russia and Sweden see De Martens, *Recueil*, vol. iii, pp. 170-173, and Annual Register, pp. 118-120.

³De Martens, vol. iii, pp. 175, 187.

⁴*Ibid.* 182.

1661 was cited, wherein it is expressly stated that the goods of enemies shall not be concealed on board the ships of the other confederate; and that the goods of enemies found on board the ships of either confederate shall be made prize. But the goods of the subjects of the confederate shall be restored. Treaties, it was added, can not be altered, unless by the mutual consent of the contracting parties; they are equally obligatory on both, and the King would observe and maintain them as a sacred and inviolable law.¹

Appeal to the faith of treaties had, however, no effect on the conduct of these courts. Not that the obligation of these treaties was, or could be, denied. So far from it, these treaties were expressly cited by these courts themselves; and, with what would be called impudence in private transactions, some of the articles of these treaties were appealed to as still existing, by both Sweden and Denmark, while other articles of the same treaties were flagrantly violated at the same moment. Thus Denmark, in her treaty with Russia, stated in art. III, that she would abide by her treaty with Great Britain of 1670, for her definition of contraband between herself and England;² yet, by this same treaty, provision was made to prevent the goods of enemies from being concealed on board the ships of friends. And in art. II of the treaty between Sweden and Russia, Sweden refers expressly to art. XI of her treaty of 1661, for her definition of contraband between herself and England;³ yet, by the very next article, the twelfth, it was engaged that the goods of enemies should be taken from the ships of friends. Yet it was with such a flagrant violation of right, for the sake of a transient interest, that these powers entered upon treaties, based, according to their highsounding preamble, on the dignity of the contracting sovereigns, their care for the happiness of their people, and their solicitude for the rights of mankind in general.

On the 28 June/9 July, 1780, was made the treaty between Russia and Denmark, which was the first of the series establishing the confederacy of the Armed Neutrality. By article III of this treaty, it was stated, that "their Majesties after having already insisted, in their declarations to the belligerent powers, on the general principles of natural right, of which the freedom of commerce and navigation as

¹De Martens, vol. iii, p. 188.

²*Ibid.* 191.

³*Ibid.* 200.

well as the rights of neutral nations are a direct consequence, have resolved no longer to allow them to be dependent on an arbitrary interpretation, suggested by isolated and momentary interests. With this view, they have agreed,

I. That all vessels may freely navigate from port to port, and upon the coasts of nations at war.

II. That property belonging to the subjects of states at war, shall be free on board neutral vessels, excepting merchandise of contraband.

III. That to determine what characterises a blockaded port, this term shall only be allowed to those where, from the arrangements of the power which is blockading, with vessels stationary and sufficiently near, there is an evident danger in entering.

IV. That neutral vessels can not be stopped, without just cause and evident reasons; that they shall be adjudged without delay; that the proceedings shall be always uniform, prompt, and legal; and that, in every instance, besides the reparation afforded in cases in which there has been loss, but not offence, complete satisfaction shall be given for the insult offered to the flag of their Majesties.

The treaty then went on to engage that each party should equip a fleet to support these principles, that mutual succour should be afforded, and that both parties should act in concert; that these stipulations should be regarded as permanent, and that other powers should be invited to accede to similar conventions.¹

A treaty precisely similar, and copying the above four stipulations, and the ensuing articles, *verbatim*, was made between Russia and Sweden, on the 21 July/1 August, 1780, and Sweden and Denmark exchanged declarations, each binding themselves to the Russian treaty with the other, and making the confederacy for mutual defence complete between these three Powers.²

On the 24th December, 1780, the United Provinces made, at St. Petersburg, a treaty with Russia, in which they acceded to the above treaties with the Northern courts, and issued declarations of their joining in the full extent of the new confederacy.³

Before the conclusion of this treaty, however, Great Britain had declared war, on the 20th December, against the United Provinces. By treaties existing between this country and the United Provinces, it

¹De Martens, *Recueil*, vol. iii, pp. 189-195.

²*Ibid.* 198-208.

³*Ibid.* 215-222.

had been agreed that the principle that "free ships make free goods" should exist between the two countries; and also an alliance for mutual defence existed engaging that if either party were attacked, the other party should break with the aggressor in two months from the time of requisition to do so. On France and Spain joining in the American war, such requisition was made by our ambassador, but was evaded by the United Provinces. A hostile feeling was produced by this conduct, and also by the evident favouring of the American cause by the United Provinces; and, on the 17th April, 1780 a declaration was published by our government, announcing that the succours stipulated by the treaty of 1678 never having been afforded by the States General, the provisions of the treaty of commerce of 1674 should be suspended, and the United Provinces treated, no longer in accordance with the privileges there granted, but only on the footing of other neutral nations.¹ Disputes had already taken place between the two countries regarding a squadron commanded by Paul Jones, which had been refitted in the Texel, and also respecting a fleet of merchantmen convoyed by Count Byland, who had been fired at, upon his refusing to submit to search, and the naval materials on board his merchantmen confiscated as contraband, contrary to the provisions of the treaty of 1674. The angry feeling between the two countries was aggravated by the accession of the United Provinces to the Russian Memorial; and a crisis arose upon the capture of Mr. Laurens, formerly president of the American Congress, who was taken by a British ship, and among whose papers were found documents shewing that the United Provinces had been in friendly correspondence with the United States ever since 1778, and who had with him a sketch of a treaty of amity and commerce between the United States and the States General, which appeared to be in a train of negotiation, and which was approved by the Pensionary of Amsterdam.²

Soon after the British declaration of war, the States General made application for the assistance stipulated in the new confederacy, in case any member of the alliance should be attacked in consequence of the principles there promulgated. But Sweden, to whom the application was made, replied that the British declaration could hardly be regarded as a consequence of the States General joining the new confederacy, inasmuch as that junction was made after the British declaration of

¹Annual Register, 1780, p. 61.

²See the British Manifesto, *ibid.* p. 142.

war, the latter being dated London, the 20th December, while the Dutch treaty was dated St. Petersburg, the 24th December. But although not coming within the terms of the treaty for mutual defence, it was possible that the British declaration had been hastened in order to anticipate that contingency, although the conduct of the United Provinces in regard to the Russian Memorial was not noticed in the British Manifesto. Still, if the Northern courts declared war in consequence of our breaking with Holland, they removed all the advantages of neutrality which the confederacy was especially established to promote; while, on the other hand, if the United Provinces were left to their fate, it would seem as if the confederacy had agreed to a convention which they were afraid to carry into execution. Therefore, concluded the Swedish Note, it would be best for the Northern courts to adopt a middle course, and present in their joint names a Memorial to the British court, offering their mediation between Great Britain and the United Provinces. In this proposition Russia acquiesced.¹ But the position of the Northern powers with regard to this country, was not, at that period, the most likely to make an offer of mediation acceptable; and the Dutch, having deserted our alliance for the prospect of a more gainful union, found themselves unsupported by their new confederates, and had to buffet for themselves till the end of the war, and to see their commerce cut up, and some of their colonies taken from them, till they were included in the general peace, in 1783, with the loss of Negapatam.

To return to the acts of accession to the Armed Neutrality. On the 8th May, 1781, a treaty was made between Prussia and Russia, embodying the four articles of the new alliance, and establishing Prussia as a member of the confederacy.²

On the 10th July, 1781, a similar treaty was made between Russia and the Emperor of Germany.³

A similar treaty was made between Russia and Portugal, dated the 13th July, 1782.⁴

And on the 10th February, 1783, the King of the Two Sicilies acceded to the northern confederacy.⁵

Thus had all the principal continental powers acceded to the princi-

¹See the correspondence in De Martens, *Recueil*, vol. iii, pp. 230-244.

²De Martens, *Recueil*, vol. iii, p. 245.

³*Ibid.* 252.

⁴*Ibid.* 263.

⁵*Ibid.* 267.

ples of the Armed Neutrality, when its operations were suspended by the general peace of 1783. In whatever point of view we regard this celebrated confederacy, it is difficult to find anything respectable connected with it. Among others, the following observations suggest themselves. I. The abandonment of principle for interest marks the commencement of the Armed Neutrality; an open breach of faith being made by the two powers that first joined Russia in the association. II. The ready manner in which one party of the belligerent states acceded to the novel principles, was itself a proof that these principles were inconsistent with the duties of neutrality, as they evidently assisted one side in the contest, and injured the opposed state, which refused to acquiesce in these pretensions. The declaration of France and Spain therefore, that they approved of the northern alliance, was a disproof, not a sanction, of the justice of the confederacy; and states, with the title of an Armed *Neutrality*, undertook to interfere in the issue of a war, by measures which directly assisted one, and directly injured the other, belligerent. III. A principle which the northern confederacy undertook to establish as a fundamental right of Neutrality, was then for the first time heard of in Europe; for the second article of the statement of principles declares that "free ships shall make free goods," but does not convey the corresponding stipulation that "enemy's ships shall make enemy's goods." The latter engagement is never once referred to in any of the documents creating the Armed Neutrality. But never had there been, among Christian powers, a treaty which conveyed the former immunity without also engaging the latter privilege. One principle had invariably been conveyed in exchange for the other. But the framers of the Armed Neutrality, relying upon the imposing aspect of their union, and upon Great Britain having already to cope with several enemies, defied at once precedent and principle, and attempted to establish by force what their own subsequent conduct proved them not to have regarded as a right, and what never had been claimed as such by any government whatever. IV. The number of the states that joined in the confederacy does not in the least affect the question of the right of the principle which they sought to establish. An universal, or even general, continued acquiescence in any given state-principle, may make it probable that such a principle is based on universal law. But no combination of states can establish that as a part of the Law of Nations, which is not dependent upon natural equity, nor can they, rightfully, make the observance of any stipulation incumbent upon any but the contracting

parties. A glance at the position of the European powers, at the time of the Armed Neutrality, will destroy any belief that the principles of the confederacy must have been just because they were so generally recognized. Russia, Sweden, Denmark, and the United Provinces, had the most direct and immediate interest in the pretensions which they engaged to defend. Remaining neutral at a time when some of the greatest commercial states were at war, their shipping interest would be incalculably benefited if they could carry on trade, "not with, but for," the belligerent countries, and transport the property of the subjects of the latter exempt from the capture of the adverse party. On the other hand, France and Spain had equally a direct interest in the principles of the Armed Neutrality, because, from their naval inferiority, they were unable to carry on their commerce themselves, and were glad to commit their property to the safe custody of neutral bottoms if these secured their cargoes from capture. Thus all the principal parties to this alliance were directly interested in the claims thereby advanced. But, as a test of the sincerity of their professions, it will be as well to consider whether these same parties had adhered to these principles before this particular contingency arose, or whether they maintained them after this transient advantage had passed away? With regard to the former, it is notorious that the maritime codes of France and Spain had been of unusual severity, and that so far from sparing enemies' goods on board a neutral ship, they confiscated such neutral ship into the bargain, unless where special treaty came to the rescue of the neutral: and, again, Sweden and Denmark had treaties, which had been in constant force for more than a century, engaging the reverse of the principle of the Armed Neutrality. Thus the conduct of these powers had been in direct contradiction to the novel pretension, *before* the occurrence of this particular opportunity. And with respect to their conduct *after* it, it must be remarked—V, that some of the leading parties to the Armed Neutrality violated its provisions on the very first occasion in which they happened to be belligerents. In the war between Sweden and Russia, in 1788, Gustavus III renounced the principles of the Armed Neutrality, and Russia followed the example, although not with the same open profession.¹ And this was done only five years after one of the treaties of the Armed Neutrality, notwithstanding the permanency which was declared to be guaranteed to the new stipulations by art. IX of the treaty of 1780, affording

¹See *Büsch Völkerseerecht*, pp. 34, 36.

an obvious satire on the motives that led to the confederacy, and to the great scandal of those writers who have advocated the maxims thus attempted to be established. VI. Finally, it must be remarked, that the Armed Neutrality of 1780 was attended by no consequence to Great Britain. Our government never once acceded to the principles therein put forward, but made emphatic remonstrance against admitting such claims. No decisive issue took place between the two parties, the northern confederates having no case for their joint action against our government, and Great Britain, having already France, Spain, the United States, and the United Provinces to oppose single-handed, was not in a position to take such measures for the vindication of her maritime rights as we shall see she had recourse to on a subsequent occasion.

In most of the treaties following the restoration of peace, the principle that "free ships make free goods," and the converse, was stipulated. Before that period, however, was made the treaty between the United States and the United Provinces, in 1782, where these two stipulations are found in articles XI and XII.¹ And in the same year, 1782, was made a treaty of commerce between Denmark and Russia, where the four articles of the Armed Neutrality are embodied in article XVII.² The treaty of Versailles, between France and Great Britain, in 1783, renews the treaty of commerce of 1713, in which the two clauses are inserted,³ which is also done in article II of the treaty of the same date between Great Britain and Spain.⁴ But no such renewal of former treaties was made in our treaty with the United Provinces, in 1784.⁵ The two clauses are found in articles VII and XIV of the treaty between Sweden and the United States, in 1783.⁶ On the contrary, the treaty of the same year between Russia and the Porte, engages, article XLIII, that Russian goods on board the ship of an enemy of the Porte shall not be confiscated, nor the merchants made slaves, if they be there for peaceful purposes,—being in accordance with the old rule. This treaty was renewed by the treaty of Jassy in 1792.⁷

In the treaty between Prussia and the United States, in 1785, the

¹De Martens, *Recueil*, vol. iii, pp. 439, 441.

²*Ibid.* 474.

³*Ibid.* 521.

⁴*Ibid.* 543.

⁵*Ibid.* 560.

⁶*Ibid.* 568, 572.

⁷*Ibid.* 635, and vol. v, p. 293.

twelfth article engages a treatment similar to the second article of the Armed Neutrality, that is, it stipulates that the goods of enemies shall be free on board the ships of friends, without conveying the counter stipulation that the goods of friends shall be confiscated if found on board the ships of enemies.¹ The treaty between France and the United Provinces, in 1785, renews, by article VIII, the articles of the treaty of Utrecht, which stipulated that "free ships make free goods," and the converse.² The treaty between Austria and Russia, of the same year, renews the engagements of the Armed Neutrality, by article XII.³ The treaty of commerce between Great Britain and France, in 1786, engages that "free ships make free goods," and the converse, by articles XX and XXIX.⁴ The treaty between France and Russia, in 1787, renews the engagements of the Armed Neutrality, by article XXVII;⁵ which is also done by the treaty between Russia and the king of the Sicilies, of the same year, article XVIII;⁶ and, again, by the treaty between Russia and Portugal, also of 1787, article XXII.⁷ In a treaty, of the same year, between the United States and Morocco, it was agreed, article III, that enemies' goods should be free on board neutral vessels; and also, that neutral goods should be free on board an enemy's vessel. And the same stipulation is made by the treaty between the United States and Tripoli, in 1796, and between the United States and Tunis, in 1797.⁸ In the treaty of commerce between France and Hamburg, in 1789, the engagements of the Armed Neutrality are stipulated by article II.⁹ In the treaty, also of 1789, between Denmark and Genoa, the engagements that "free ships make free goods," and the converse, are agreed to by articles V and IX.¹⁰

Such a collection of treaties, agreeing in the principle that the cargo shall be free, or be confiscated, according as the ship is neutral or enemy, seem to go far in establishing, not that this principle was

¹De Martens, *Recueil*, vol. iv, p. 42.

²*Ibid.* 68.

³*Ibid.* 76.

⁴*Ibid.* 168, 172.

⁵*Ibid.* 210.

⁶*Ibid.* 236.

⁷*Ibid.* 327.

⁸*Ibid.* 248, and vol. vi, pp. 298, 406.

⁹*Ibid.*, vol. iv, p. 426.

¹⁰*Ibid.* 442, 443.

enforced by the law of nations independent of treaty, but that it was the general wish of maritime powers that this practice should be adopted, and that it might probably become the conventional law of Europe, among those states, and only those states, which were entering into these engagements.

But such an opinion was soon proved fallacious by the result. Not fifteen years from the date of the Armed Neutrality, the wars with France had involved almost every European state; and the principle which appeared obtaining such general prevalence was abandoned by nearly all the members of the Northern confederacy, the great leader in that alliance, Russia, being the chief instigator of the unusual severities which were adopted towards neutrals.

Page 274.—We now come to the period when, by the second Armed Neutrality, in the year 1800, an attempt was again made to force on this country the recognition of the principle that “free ships make free goods.” The second Armed Neutrality differs from the first in many important particulars: It had its origin in discussions regarding the right of searching merchants ships sailing under the protection of convoy,—which will be considered in a subsequent chapter on the right of search. The irritation produced by this discussion had been aggravated by the capture, under questionable circumstances, of two Spanish frigates by the British, who had taken possession of a Swedish ship in the port of Barcelona, during the night, and under cover of her neutral flag had surprised and taken two Spanish frigates lying under the batteries of Barcelona. These differences might, however, have been amicably terminated, but for the disappointment of the Emperor of Russia regarding the island of Malta, which he expected to have had given up to him by the British. Lord Whitworth, who had been sent to Copenhagen on a special mission regarding the Danish convoy, had concluded, on the 29th August, 1800, a convention, in which that dispute was adjusted in a friendly manner.¹ But before this could be known at St. Petersburg, the Emperor Paul had issued a declaration, dated 16/27 August, inviting the courts of Sweden, Prussia, and Denmark, to re-unite in a confederacy for an Armed Neutrality, and giving the British conduct in regard to the Danish convoy as a reason for such an alliance. On learning that the British squadron, sent to support the representations of Lord Whitworth, had passed the

¹De Martens, *Recueil*, vol. vii, p. 149.

Sound, the Emperor Paul laid an embargo on all British property in his dominions, which embargo was taken off on the convention between Great Britain and Denmark being known at St. Petersburg.¹

On the surrender of Malta to the British in September, 1800, the Emperor Paul claimed this island from our government, alleging his convention of 1798, in which, however, there was not a single clause, affording not only a reason, but even a pretext, for such a demand.² It will be remembered that Paul had become Grand Master of the Knights of Malta, a fantastic attachment to that order being one of the many points which gave color to the suspicion of his insanity. Vexation at the refusal of the British to comply with his request, induced him to resort to the first means that offered of injuring this country, and in spite of the treaty between Great Britain and Russia, of which the twelfth article expressly forbade that, in case of rupture, the goods or persons of the subjects of either country should be detained or confiscated he laid an embargo on all British property in his dominions; and a British merchantman having managed to escape from Narva, he ordered that another British vessel should be burned.³

While in this state of incipient hostility, Russia concluded with Sweden, on the 4/16 December, 1800, a treaty renewing the confederacy for an Armed Neutrality. The principles declared to be established by this treaty, article III, were as follows:

I. That any vessel may freely sail from port to port, and on the coasts of nations at war.

II. That property belonging to the subjects of belligerent Powers shall be free on board the ships of neutrals, excepting goods that are contraband.

III. That to determine what constitutes a blockaded port, this term shall only be allowed to ports where, from the arrangements of the Power which is attacking with vessels stationary and sufficiently close, there is an evident danger in entering; and that any vessel sailing towards a blockaded port shall not be regarded as contravening the present convention, unless, after having been warned of the state of the port by the commander of the blockading squadron, she shall attempt to enter, employing either force or fraud.

IV. That neutral vessels may not be detained except on just grounds

¹De Martens, *Recueil*, vol. vii, pp. 150-154.

²See the treaty, which is a treaty of subsidy, *ibid.*, vol. vi, p. 557.

³De Martens, *Recueil*, vol. vii, p. 155.

and evident facts; that they shall be adjudged without delay, that the process shall always be uniform, prompt, and legal; and that in every instance, besides an indemnity to parties who have suffered loss without having committed wrong, there shall be afforded a complete satisfaction for the insult offered to the flag of Their Majesties.

V That the declaration of the officer commanding the ship or ships of the royal or imperial navy, accompanying a convoy of one or more merchant ships, that his convoy has not on board any goods that are contraband, shall suffice to prevent there being any visitation for search on board his ship or the ships of his convoy.

By subsequent articles mutual assistance is promised in case of attack.¹

Articles to the same effect were engaged by a treaty, of the same date, between Russia and Denmark,² and, two days later, by a treaty between Russia and Prussia.³

An account of subsequent proceedings regarding this confederacy is given in the present treatise, in the chapter on the right of Search, to which the article on Convoy seemed to make the discussion most properly belong. It will be only necessary here to recapitulate that, the above-named States having joined themselves to a Power, *after* it had placed itself in a situation of equivocal amity with this country, an embargo was laid upon Danish and Swedish, as well as Russian property, in British ports. Subsequently the battle of Copenhagen took place, the Emperor Paul was assassinated, and the Emperor Alexander, immediately on his accession, made a treaty, which adjusted the dispute with Great Britain. In this treaty, dated 5/17 June, 1801, Great Britain acceded to the proposals of the Northern courts regarding convoy, and Russia agreed to the old principle, that neutral ships should not protect enemies' property. By article III, sec. 2, it was agreed that goods embarked in the ships of neutrals shall be free, excepting contraband of war *and the property of enemies*. To this treaty Denmark and Sweden afterwards acceded.⁴ Thus the principle that "free ships make free goods," had been attempted to be enforced by a confederacy which was broken by a single maritime Power, and the principle of the old rule was vindicated and reestablished. In the first Armed Neutrality, Great Britain, though she never acquiesced

¹De Martens, *Recueil*, vol. vii, p. 172.

²*Ibid.* 181.

³*Ibid.* 188.

⁴See the three treaties, De Martens, *Recueil*, vol. vii, pp. 260-281.

in the pretensions of that confederacy, and formally protested against them, yet had too many foes at the same time to make an addition to them expedient. But, in the second Armed Neutrality, we were enabled to shew that we would not permit maritime rights to be invaded by confederates united to subvert the Law of Nations for their own selfish purposes; we forced an abandonment of principles which these confederates united to defend; and Nelson's glory at Copenhagen was of the purest character, arising from valor successfully exercised in the vindication of justice.

A treaty embodying the five articles of the second Armed Neutrality, was made between Russia and Sweden on the 1/13 of March, 1801,¹ that is, before the attack on Copenhagen, and ratified at St. Petersburg on the 30 May/11 June, that is, after the signature of the above-named treaty between Russia and Great Britain. This merely shows how completely impossible it is to deduce anything like a system from the treaties of nations regarding the principle of "free ships free goods;" Russia, the leader in both the Armed Neutralities, making, in the instances before us, a treaty embodying one principle with Great Britain, while she ratified, in the very same week, a treaty with Sweden containing exactly the reverse principle.

NYS: *Le Droit International*. New edition. Brussels, 1912.

Ernest Nys. Contemporary Belgian publicist; born in 1851. Professor of international law at the University of Brussels; member of the Institute of International Law; member of the permanent court of arbitration. He is the author of many works on special branches of the subject of international law and is a frequent contributor to the periodicals. Among his numerous works, one of the most recent and systematic is *Le Droit International*, three volumes, 1904 *et seq.* The Anglo-American interpretation of international law by courts and jurists has been one of his special fields of study, and he is well known as the French translator of Westlake and Lorimer.

Volume 3, page 586.—We have recalled how, on March 17, 1693, Denmark and Sweden signed a treaty, which is perhaps the first ex-

¹*Ibid.* 329.

ample of a league to assert the rights of neutrality. In 1780 there were concluded between Russia, Denmark, and Sweden conventions likewise intended to uphold the rights of non-belligerents against the pretensions of belligerents, to which conventions a number of maritime States acceded. History calls this agreement of 1780 "the armed neutrality league."

The Declaration of Independence of the English Colonies in America is dated July 4, 1776. On February 6, 1778, Louis XVI, King of France, who had already authorized his subjects to carry munitions of war to the Americans, formally recognized the United States as an independent nation and concluded with them a real treaty of alliance in the form of a treaty of amity and commerce. On March 15, 1778, the French Ambassador informed the Court of London of the signing of the treaty. This was the signal for war. The family pact signed at Paris on August 15, 1761, between the King of France and the King of Spain, binding both the reigning sovereigns and their descendants and heirs, was destined to draw Spain into the hostilities. Charles III vainly endeavored to play the part of mediator; on June 16, 1779, he was forced to make war on Great Britain.

Spain and Great Britain put into operation the most rigorous measures with regard to neutrals on the sea. "Great Britain," says a writer, "who was the most directly interested in the argument, regarding the Americans as rebels, claimed the right to prohibit neutral Powers to have any commercial intercourse with her insurgent colonies. English Admiralty Judges—and the most formidable opponent of the rights of neutrals among them was Sir James Marriott—applied in the matter of blockade and contraband of war theories that were very elastic and fatal to neutral commerce. The privateers of Great Britain, feeling assured that they would very seldom, not to say never, be condemned to pay expenses, still less damages, became the scourge of neutral commerce."¹ In the treaty which she had concluded with the United States on February 6, 1778, France had recognized the inviolability of a neutral flag, and if she had not in her regulations of July 26, 1778, abandoned the traditional principles of her marine legislation, she had tempered them with moderation.

It has not yet been definitely ascertained whether the credit of having conceived the idea of solemnly declaring the rights of neutrals against unjust pretensions belongs to Catherine II, Empress of Russia,

¹Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 57.

to Charles Gravier de Vergennes, Secretary of State of Louis XVI of France, or to Andrew von Bernstorff, Minister of Charles VII of Denmark. Justice requires us to divide the honor, but it is proper to call attention to the part played by Vergennes. "The union of neutrals was his work," says a writer, "and he succeeded in formulating a masterly conception, which brought forth only beneficial results. The Secretary of State had conceived that measure even before the signing of the treaty of alliance with America. His object was to deprive the English of the mighty power which the sovereign possession of the sea assured to them. Holland, Sweden, Denmark, Russia were so situated geographically that they could enjoy, like England, the advantages of the sea; but between all these countries and England there were strong ties, either close political ties or those that were almost as irresistible, created by the fear of displeasing the harsh and vindictive Power which the downfall of France had for twenty years made mistress of Europe. M. de Vergennes was too well aware of this situation to think of attacking it from the front. His economic sense and the ideas that it gives enlightened the politician in him. . . . He perceived the new strength which the doctrine that the sea belonged to everybody and to no one, and that it was the right of neutrals to live under this law, would have in drawing these countries together."¹ The author whom we have just quoted shows how the injury to her interests finally prevailed with Catherine II over the temptations with which Great Britain was luring her Court to bring her over to its side and how Count Panin, the Empress's Chancellor, seized this occasion to attach his sovereign to the doctrine of France. "Catherine II," he writes, "addressed to the belligerent Courts of Europe the declaration, for which Panin, the Prime Minister, has, not without reason, received the praise of history, but it is proper to mention the fact that M. de Vergennes and the Government of Louis XIV had laid down the doctrine and practically dictated its terms."²

Without attempting to write the history of the armed neutrality, let us recall certain facts in connection with it.³

¹Henri Doniol, *Histoire de la participation de la France à l'établissement des Etats-Unis d'Amérique*.—Correspondance diplomatique et documents (1888), vol. 3, p. 702.

²*Ibid.*, vol. 4, p. 436.

³The Cambridge Modern History, vol. 9, 1906, chap. 2, The Armed Neutrality, by T. A. Walker and H. W. Wilson.

The merchant marine of Russia was undeveloped and the business of its northern provinces was practically in the hands of the English. In 1778 the United States endeavored to destroy this source of wealth of its enemy, and in the summer of that year there appeared in the northern seas an American privateer, which inflicted severe damage upon the vessels that frequented the port of Archangel. In the month of August the Russian Government, seeking a way to put an end to these abuses, entered into negotiations with Denmark. The problem confronting the Court of St. Petersburg was to protect the merchant marine of one of the belligerent States, and it proposed that its coasts should be patrolled by a fleet to be furnished by Denmark and Russia. Denmark, who had profited by the transportation business of France and who desired recognition of the protective maxims of neutrality, took a different view of the matter. Sweden, whose interests were identical with those of Denmark, took part in the negotiations.

No immediate result was obtained, but toward the end of 1779 new developments brought about further negotiations between the Courts of St. Petersburg and Copenhagen. A Spanish cruiser seized off Gibraltar, which was blockaded by the Spaniards, the Dutch vessel *Concordia*, which a merchant of Archangel, on half shares with a Dutch merchant, had loaded with grain, and the Prize Court at Cadiz had confirmed the prize. Russia protested. The Spanish royal order of July 10, 1777, simply required the searching of neutral vessels that passed Gibraltar and authorized the capture only of vessels which violated the blockade. The Court of St. Petersburg therefore demanded reparation for the act and the withdrawal by Spain of the ordinance it had published concerning the Straits of Gibraltar. A rescript to this effect was sent on January 19, 1780, to the Russian Envoy at Madrid, and, since four vessels belonging to a Russian merchant had just sailed from Russia, with a Russian cargo, bound for Marseilles, the Government requested that they should be protected. At that very moment St. Petersburg learned that another Russian ship, the *St. Nicholas*, had met with the same fate as the *Concordia*. It was laden with wheat for Malaga and Leghorn and had been seized and taken to Cadiz.

It was then that the Empress of Russia decided upon further diplomatic action. She determined to persuade Denmark and Sweden to back up her efforts, to invite the United Provinces and Portugal to

adhere to a common policy with them, and, finally, to draw up a declaration on the principles of the freedom of neutral commerce, which should be submitted to the belligerents.

As a matter of fact, the policy of the French Government triumphed; and the adoption of the program drawn up by Catherine II was to result in the complete isolation of Great Britain.

The Russian Government's declaration was dated February 27/March 9, 1780. It sets forth the principles which are "contained in the earliest law of peoples, the observance of which every nation has the right to demand and which the belligerent Powers can not invalidate without violating the laws of neutrality and abandoning the maxims which they have adopted in various public treaties and agreements."

According to the declaration, the principles may be reduced to the following points:

(1) That neutral ships may freely sail from port to port and along the coasts of the nations at war.

(2) That effects belonging to subjects of the Powers at war are free on board neutral vessels, with the exception of contraband.

(3) That the Russian Government, in the matter of determining what constitutes contraband, holds to the provisions of the treaty of June 20, 1766, between Russia and Great Britain, which provisions it extends to all the Powers at war. With the exception of saltpeter, sulphur, saddles and bridles, the articles of contraband enumerated in the treaty were specially designed for use in war. It was stipulated that when a neutral ship carried such articles, the quantity of munitions required for its own needs would be exempt from seizure.

(4) That to determine what constitutes a blockaded port, none shall be considered such except a port where the attacking Power has stationed its war-ships sufficiently near to make access thereto clearly dangerous.

(5) That these principles shall constitute the rule in proceedings and judgments as to the legality of prizes.

This declaration was communicated on February 28/March 10, 1780, to the representatives of the neutral States accredited to the Court of St. Petersburg. and the envoys of Denmark, Sweden, the United Provinces, and Portugal gave the Russian Government the most friendly assurances.

To crown this declaration with success, armed neutrality had to

follow. This had been foreseen, and on February 27 instructions had been forwarded at the same time as the declaration to the Russian Ministers accredited to foreign governments. These instructions laid stress upon the necessity for a vast league, which would employ force, if there were need, to bring about respect for the principles set forth, and went on to say that it was the desire of the Empress to have these new maxims made binding upon all nations, when peace should be concluded.¹

Among the neutral nations, Denmark seemed to be the surest and steadiest support. Sweden was suspected of too friendly leanings toward France. The United Provinces, a prey to internal dissensions, were playing a waning part in European affairs; but the principles proclaimed by Catherine II were of the utmost importance to them, because the Dutch were the great ocean carriers. The attitude of the other countries was, on the whole, of little consequence.

The rescript addressed to the Russian envoy at Copenhagen instructed him to announce to the Court of Denmark that, following its example of the preceding year, the Russian Government would send in the summer a fleet to protect commerce in the northern seas, and to urge that Court to take part in this enterprise. It laid stress on the neutralization of the Baltic, pointed out the advisability of both governments forming fleets, and called attention to the fact that the principles set forth in the declaration were borrowed from Danish diplomacy. The Court of Copenhagen was invited to adhere by a formal treaty, to be drawn up in such terms as to permit other States to subscribe to it; separate articles were to settle the points which concerned only the two countries, and the Danish Government was not only to address to its ministers at Paris, London, and Madrid a note in accordance with the Russian declaration, but also to take steps with a view to obtaining the support of Sweden, Portugal, and the United Provinces. Similar instructions were given to the Russian envoy at Stockholm.

The Russian ambassadors at London and at Madrid received communications, in which the step taken by the Empress was described as "impartial and based upon the natural law." The Court of St. Petersburg considered the Americans as rebels; it had no interest in them whatever.

¹F. de Martens, *Recueil des traités et conventions conclus par la Russie avec les puissances étrangères*, vol. 2, p. 120.

The declaration was officially communicated to the envoys of the belligerents at St. Petersburg. The representative of France replied that the principles of the Empress were in accord with the intentions of his Government. The Minister of Spain confirmed the promise made by his country to satisfy the demands of Russia with regard to the injuries suffered by its subjects. The reply of the English Minister stated that lawful neutral commerce would be respected by Great Britain, and shortly after, in a note handed to the Chancellor, the representative of Great Britain gave assurance that his Government was conducting itself in accordance with the principles of the law of nations and the stipulations of treaties. The note asserted that wherever there had been a question as to the nature of the cargo Great Britain had indemnified the owners.

The cabinets of the belligerent countries likewise replied.

The Court of London invoked the law of nations, and set up against the declaration the system which it was following. The despatch was in very general terms.

France declared itself to be in accord with Russia. "In the same degree," says a writer, "in which the Russian declaration of March 9 had received but a cool welcome in England, in France the principles which it laid down were warmly applauded. When it reached Versailles, there was an outburst of joy."¹

The Spanish note stated that the measures of the Spanish Government, against which Russia had taken exception, were the result of Great Britain's attitude. The Court of Spain rallied to the support of the views held by the Empress, the application of which that Court itself had demanded, and it was its intention to respect them.

The negotiations with Denmark were not long in producing results. Bernstorff had at the start interposed certain objections, the safest way, in his opinion, being the conclusion of a Russo-Danish alliance. Nevertheless an agreement was reached.

On July 8 Denmark made a declaration similar to the Russian declaration, and on July 9, 1780, there was signed at Copenhagen a maritime convention for the maintenance of the principles proclaimed in the double declaration. The two States agreed to equip a certain number of war-ships, which were to act in concert, in case of need, for the protection of the commerce of the contracting parties. It was

¹P. Fauchille, *La diplomatie française et le liqûe des neutres de 1780 (1776-1783)*, 1893, p. 375.

decided that, if either or both of the signatories were disturbed or molested as a result of the convention, the two Governments should make common cause. Separate articles proclaimed the neutrality of the Baltic and the desire of restoring peace between the belligerents. It was stipulated that an effort should be made to the end that the system of neutrality might serve as the basis for a universal code, in which should be laid down the rules to be followed by all peoples in time of naval warfare.

On July 21 Sweden made a declaration similar to the declarations of Russia and Denmark, and on the same day a convention was signed at St. Petersburg between Russia and Sweden. It determined, in addition, the nature of contraband of war, and secret articles contained the stipulation with regard to the Baltic.

Denmark acceded to this convention as a principal party. On July 9 Sweden likewise gave its assent to the convention. The Court of Russia addressed a note to the belligerent Powers, informing them of the double accession.

On November 30, 1780, the States-General of the United Provinces sent their adhesion to the league, but the resolution had not been approved by all the Provinces and, when the convention was on the point of being signed, the country was drawn into the war against Great Britain. The United Provinces called upon the northern Powers to come to their aid, as stipulated in the armed neutrality agreement; but, as the rupture between Great Britain and the United Provinces had taken place before the accession of the United Provinces and as the result of causes foreign to the objects of the neutrality alliance, their appeal was refused.

On May 8, 1781, Prussia guaranteed the system of neutrality. Austria was, in turn, invited to adhere. Joseph II and Count von Kaunitz considered the formality as superfluous and ill-timed. As a matter of fact, they were displeased because the Empress had addressed the King of Prussia first. The Emperor's interest to maintain the Russian alliance dictated his conduct. He adhered, not by a formal treaty, but by an exchange of acts signed by the two Sovereigns, the one, an act of accession, the other, an act of acceptance. The exchange of these four documents took place on October 19, 1781.¹ Portugal acceded by the Treaty of St. Petersburg, dated July 13,

¹F. de Martens, *Recueil des Traités*, etc., vol. 2, p. 121.

1782; the Kingdom of the Two Sicilies by the Convention of February 10, 1783.

France had replied on July 27, 1780, that the Russo-Danish measure was "the greatest blessing which the present war had been able to secure to Europe." The reply of Spain is not known. As we have seen, the Congress of the United States had not received an official communication; but, on the advice of Vergennes, it gave its support to the principles proclaimed and declared that its Ministers to foreign countries should be authorized to accede, if they were asked to.¹ Great Britain made protestations of friendship, and in view of the turn affairs had taken it recommended its cruisers and privateers to act with discrimination.

The peace of Versailles of 1783 again put into effect the stipulations of the treaties of commerce signed at Utrecht in 1713. The maritime and commercial convention concluded between Great Britain and France renewed the same provisions. Taken in connection with the league of neutrals, this was a significant fact, but it should be remarked that the treaty concluded between Great Britain and the United Provinces contained no similar stipulation, so that the former of these two countries was in a position to consider the maxims favoring neutrals as exceptional in common law.

While asserting the freedom from seizure of vessels under a neutral flag, as well as their enemy cargo, with the exception of contraband of war, the armed neutrality league of 1780 and the treaties which followed it were silent as to the status of neutral goods under an enemy flag. This omission was intentional; the northern Powers feared lest they might appear to be demanding too much. However, it is none the less true that, all things considered, the league produced practical results. It had boldly brought to the fore the question of reforming international maritime law, and it is no exaggeration to regard it as the line of demarcation between two distinct epochs in the development of the law of nations.² The effect was particularly conspicuous in the field of science, where the movement favoring neutrals has become much more marked since the declaration.

¹H. Doniol, *Histoire de la participation de la France à l'établissement des Etats-Unis*, vol. 4, p. 437.

²L. Gessner, *Les droits des neutres sur mer*, 2d ed., 1875, Preface, p. vi.

VII

During the wars of the Revolution and of the Empire belligerents disregarded at will the rights of neutrals. In 1793 Great Britain, Prussia, and Russia made common cause in prohibiting the transportation of wheat and provisions to France, and France authorized its sailors to seize neutral vessels laden with food for the enemy or enemy goods.¹ Great Britain and France soon took still harsher measures. The Orders in Council and the decisions of the Admiralty judges of Great Britain went so far as to deny to neutrals the right to carry any products other than those of their own country; the laws of France and the judgments of its prize courts declared lawful prize vessels loaded wholly or partially with goods emanating from Great Britain or its possessions, no matter who was the owner of the goods, and the decree of August 29, 1798, even provided that any neutral subject found in the crew of an enemy war or merchant ship would be treated as a pirate.²

This was a blow to Denmark and Sweden especially. These two countries agreed to convoy their merchant ships. Great Britain claimed the right to search vessels sailing under convoy. It was then that Paul I of Russia, who had withdrawn from his alliances with Austria and Great Britain, issued his declaration of August 16/28, 1800, inviting Sweden, Prussia, and Denmark to conclude a convention for the reestablishment of the rights of neutrality. On December 16 two treaties were concluded at St. Petersburg, one between Russia and Sweden, and the other between Russia and Denmark. On the 18th a treaty was concluded between Russia and Prussia. Each of the three Courts acceded to the conventions of the other Courts with Russia, and the treaties of 1800 thus formed a genuine quadruple alliance.

Article 3 of the treaties set forth the "general principles of the rights of neutrals." These principles were as follows:

(1) Every vessel may sail freely from port to port and along the coasts of the nations at war.

(2) Effects belonging to the subjects of the Powers at war are free on board neutral vessels, with the exception of articles of contraband.

¹C. de Martens, *Nouvelles causes célèbres du droit des gens*, vol. 2, p. 179.

²Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 73.

(3) A port is considered to be blockaded when access thereto is clearly dangerous as the result of the measures taken by one of the belligerent Powers by placing its war-ships nearby. Neutrals are not permitted to enter the port.

(4) Neutral vessels may not be arrested except for just cause and self-evident facts. They must be adjudicated without delay and by due process of law.

(5) The declaration of the commanding officer of the war-ship or war-ships accompanying merchant vessels that his convoy has no contraband goods on board must suffice and there is no occasion to search such vessels. The captains of war-ships shall receive the strictest orders to prevent trade in contraband goods. To ensure the execution of these provisions, the two Sovereigns shall equip proportionate numbers of vessels and frigates.

Articles 11 and 12 permitted other Powers to accede to the convention and provided that the measures taken should be brought to the knowledge of the belligerents. Great Britain retaliated with war, which was of short duration, for the death of Paul I caused a sudden change in Russian policy, and on June 17, 1801, the maritime convention of St. Petersburg was concluded between England and Russia.

The rules adopted were as follows:

(1) The vessels of neutral Powers may freely enter the ports and sail along the coasts of the nations at war.

(2) This freedom does not apply to contraband of war.

(3) The flag does not cover the goods; that is to say, the freedom of the neutral vessel does not extend to the enemy property with which it is laden.

(4) Raw materials or manufactured articles of the countries at war are not regarded as enemy property when they have become the property of subjects of neutral nations.

(5) Contraband goods are those that have been so designated by previous treaties, in conformity with the stipulations of the treaty of February 22, 1797. The two Contracting Powers shall include under this head arms, projectiles, powder, saltpeter, sulphur, swordbelts, cartridge boxes, saddles and bridles. Provisions and wood for building are not considered contraband.

(6) No port shall be regarded as blockaded unless the attacking

Power shall have stationed its ships sufficiently near to render access thereto clearly dangerous.

(7) The vessels of a neutral Power may not be arrested except for just cause and self-evident acts. They are adjudicated without delay, and the procedure shall be uniform, prompt, and legal.

Denmark and Sweden were forced to accede to this convention, which laid down, among other things, the principles to be followed in the searching of merchant ships. The former of these States did so by the Treaty of Moscow of October 23, 1801; the latter by the Convention of St. Petersburg dated March 18/30, 1802.

In this way, by making concessions, which were, on the whole, rather slight, the London Cabinet secured recognition of two principles which it considered of great importance, namely, that the flag does not cover the goods and that vessels under convoy may be searched.

PHILLIMORE: *Commentaries upon International Law*. Third edition, London, 1885.

Sir Robert Phillimore, British publicist born in 1810, died in 1885. His *Authoritative Commentaries upon International Law* appeared in four volumes from 1854-1861, third edition, 1879-1885. By reason of its extent and careful treatment this work is regarded as the leading English treatise. The author is well known as a highly respected admiralty judge.

Volume III, page 335. CLXXXVI. The year 1780 opens a new chapter in the history of the intercourse of nations,—

*"Longa est injuria, longae
"Ambages, sed summa sequar fastigia rerum."*¹

In 1780, an accident brought into the field an unexpected and remarkable champion of the new doctrine—a then semi-barbarous Power of gigantic dimensions, touching at one extremity the farthest bounds of

¹*Æn.* i, 341-2.

civilization, but gradually developing at the other extremity forces and resources in the European hemisphere which made her opinion weigh heavily in the scale into which it was thrown. The vast Empire of Russia was governed at this time by Catharine II. Under her auspices arose the first of the associations known in history by the name of *the two armed neutralities*.

It is rather the province of the historian than of the jurist to trace the origin and lay bare the causes of this event. But it must be observed that the memoir of Count Goertz,¹ the diary of Lord Malmesbury, the records of De Flissan² and of Von Dohm,³ establish, beyond the possibility of a reasonable doubt, three things respecting it. First, that it was the result of a cabinet intrigue (which meant nothing less than the welfare of nations), availing itself of an accident.⁴ Secondly, that originally the Empress had fully adopted and meant to carry into effect the principles of international law contended for by England. Thirdly, that to the last she never clearly understood what she had done, or why she had given offense to Great Britain.⁵ Count Panin was Chancellor of the Empire; Prince Potemkin the reigning favorite of the Empress. England, in her war with her colonies, France, and Spain, sought aid in an alliance with Russia. Potemkin favored, Panin opposed it. The seizure of two Russian ships by Spain at this time incensed the Empress: Potemkin availed himself of her wrath to induce her to order the equipment of a fleet, destined to cooperate with England against Spain, if redress were denied. Panin discovered both that the fleet was ordered, and its destination. He saw in these facts, however, the opportunity

¹*Mémoire sur la Neutralité armée*, p. 104.

²*Hist. Gén. et Raisonnée de la Dipl. Française*, vol. vii, p. 266.

³*Denkwürdigkeiten meiner Zeit*, vol. ii, p. 100.

⁴"L'Impératrice Marie-Thérèse, s'extasiant sur le rare bonheur de Cathérine, tint au Baron de Breteuil un discours qui confirme ce que rapporte le Baron de Goertz. 'Il n'y a pas,' lui dit-elle, à l'occasion de la neutralité armée, 'il n'y a pas jusqu'à ses vues les plus mal combinées, qui ne tournent à son profit et à sa gloire; car vous savez sans doute que la déclaration qu'elle vient de faire pour sa neutralité maritime, avait d'abord été arrêtée dans les termes les plus favorables à l'Angleterre. Cet ouvrage avait été fait par la seule influence de M. le Prince Potemkin, et à l'insu de M. le Comte de Panin; et cette déclaration, inspirée par l'Angleterre, était au moment de paraître, lorsque M. de Panin, qui en a été instruit, a trouvé moyen de la faire entièrement changer, et de la tourner absolument en votre faveur.'"—*De Flissan*, vol. vii, p. 272, note (1).

⁵*Professor Wurm* (the author of many tracts on maritime law) tells us that Catherine said to Lord Malmesbury (18th December, 1783), "Mais quel mal vous fait cette *neutralité armée*, ou plutôt, *nullité armée*?"—*Die Politik der Seemächte*, p. 314. (Hamburg, 1855.)

of crushing his rival, and he seized it with great adroitness. He applauded the determination of the Empress, but artfully suggested that an occasion now presented itself to her of appearing in the magnificent character of the lawgiver of the seas, and the protectress of neutrals, and at the same time of avenging the injury to herself. The flattery was so specious and so well applied, that the Empress placed herself in the hands of her wily and successful courtier. Panin drew up a manifesto of neutral rights, and the Empress communicated it to France, Spain, and England.

Seldom has a more important event grown from a more despicable origin. It is not, perhaps, with any unnatural reluctance, that we hear in these days that Europe acquired for the first time, towards the end of the last century, an acquaintance with the true doctrines of international justice from a quarrel between the unprincipled courtiers of a vain, profligate woman, whom the inscrutable decrees of Providence had permitted to be the absolute sovereign of a half-civilized empire.

CLXXXVII. The propositions of the new Russian International Code were as follows:¹

1. That neutral ships might freely trade from port to port, and upon the coasts of nations at war.

2. That the property of the subjects of belligerent Powers should be free on board neutral ships, excepting goods that were contraband.

3. That with regard to contraband goods, the Empress bound herself by what was contained in the Articles X and XI² of her Treaty with Great Britain, extending these obligations to all belligerent Powers.

4. That to determine what characterizes a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the Power which is attacking, with vessels stationary and sufficiently close.

5. That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

CLXXXVIII. France, Spain, Holland, Denmark, Sweden, the two latter in direct violation of the faith of treaties, gave in their adherence

¹De Martens, *Recueil*, vol. iii, p. 158. Actes relatifs à la Neutralité armée.

²"L'Article XI du Traité de 1766 désigne les seuls objets suivans comme étant de contrebande: 'Les canons, mortiers, armes à feu, pistolets, bombes, grenades, boulets, balles, fusils, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, épées, ceinturons, poches à cartouches, selles et brides, au-delà de ce qui est nécessaire pour la provision du vaisseau.'"—De Flassan, vol. vii, p. 273 (note 1).

to Russia. At a later period, Prussia and the Emperor of Germany joined the league. Still later, Portugal and the Two Sicilies acceded to the Russian confederacy.

CLXXXIX. As to France, we have seen what were the provisions of her treaty *seven months* before she joined the Russian League.

As to Spain, in the year 1780, *one month* before her accession, she had issued the severest ordinances against neutrals, ordering the seizure of vessels which carried enemies' *goods* or provisions.¹

To Denmark and Sweden, Great Britain replied by a vain appeal to the faith of treaties. Yet how did the matter stand between England and Denmark?²

In 1670, a solemn treaty of commerce was concluded between England and Denmark, the third articles of which contained the definition of contraband; but in which, however, the words, "other necessities for the use of war," were thought too indefinite. To remedy this, a convention was made to put the matter out of doubt, by an article to be substituted in the place of the other; by which contraband was declared to include the very subjects so often disputed,—ship-timber, tar, pitch, rosin, sheet-copper, hemp, sails, and cordage. This was signed on the 4th July, 1780. On the 8th was signed that declaration of Armed Neutrality, which had long been concerting between its original members, and in which the King of Denmark declares that he understands nothing under contraband, except the articles specified in the third article of the treaty of 1670.

CXC. To Russia, Great Britain made answer as to the *general* law, that "His Majesty hath acted towards friendly and neutral Powers according to their own procedure respecting Great Britain, and conformably to the clearest principles generally acknowledged as the law of nations, being the only law between Powers where no treaties subsist, and agreeably to the tenor of his different engagements with other Powers, whose engagements have altered this primitive law, by mutual stipulations proportioned to the will and convenience of the contracting parties." She added, "that precise orders had been given respecting the flag and commerce of Russia, according to the laws of nations and the tenor of our treaty of commerce; that it was to be presumed that no irregularity would happen, but that otherwise redress would be afforded

¹De Martens, vol. iv, p. 268. Ward, p. 163.

²Ward, p. 155, whose concise and clear statement I have transplanted into my text.

by our Courts of Admiralty, judging according to the laws of nations, in so equitable a manner, that Her Imperial Majesty shall be perfectly satisfied, and acknowledge a like spirit of justice which she herself possesses."¹

CXCI. But the most remarkable fact connected with the armed neutrality of 1780 remains to be stated, namely; that *every one* of the Powers composing this hallowed league for the maintenance of international justice upon the principles of the Russian edict, departed from the obligation which they had contracted as *neutrals* as soon as they became *belligerents*, and returned without shame or hesitation to the practice of the ancient law.

In the meantime it must be borne in mind that, though this Russian Convention professed to contain an exposition of the principles of universal justice, it took care to provide that its stipulations should be binding only during the present war; it held out, indeed, the prospect of future arrangements in time of peace, and Sweden was particularly anxious to propose a congress in which the question should be finally settled. We shall see what course she pursued a few years afterwards.

CXCII. The dispute between Great Britain and the Russian League was not arranged when the war was ended. But the Treaty of Versailles, 1783, between Great Britain, France, and Spain, confirmed the Treaty of Utrecht, and therefore between these contracting Powers established the principle of "free ships free goods."

The treaty between Prussia and the United States of North America, 1785, stipulates that enemies' goods shall be free on board friends' ships, but *not* that friends' goods shall be seizable on board enemies' ships.² France and Holland renewed in 1785 the articles of the Treaty of Utrecht,³ which stipulated that *free ships make free goods*, and *enemies' ships enemies' goods*. In the same year, Austria and Russia⁴ renewed the provisions of the Armed Neutrality on this subject.

In the great commercial treaty of 26th September, 1786, negotiated by Mr. Eden, under the auspices of Mr. Pitt, with France, Great Britain engaged that "free ships should make free goods, and enemies' ships enemies' goods."⁵

In the debate which took place in Parliament upon the preliminaries

¹Annual Register, 1780, p. 115.

²De Martens, vol. iv. p. 42.

³*Ibid.* 68.

⁴*Ibid.* 76.

⁵Articles XX, XXIX. Chalmers, vol. i, pp. 530-536.

of this treaty, it was objected that they contained a recognition by Great Britain of the doctrines of the armed neutrality. To this it was answered that the provisions of this treaty were only intended to apply to a case, in itself improbable, that either of the contracting parties should be engaged in a maritime war, whilst the other should remain neutral, and that these provisions were not intended to furnish a general rule to be observed towards other nations.¹

This authoritative interpretation of the treaty is remarkable, and important, and appears to have been entirely overlooked by those² who have cited the treaty as evidence that Great Britain intended to introduce the general principle of *free ships free goods* into the International Code of Maritime Law.

CXCIII. The United States of North America, the new Power which had firmly established itself before the Treaty of Versailles was made in 1783, and which carried the doctrine of international law into a new hemisphere, incorporated the two maxims, *free ships free goods* and *enemies' ships enemies' goods*, into her treaties with Holland in 1782, with Sweden in 1783, and with Prussia in 1785.³

CXCIV. The benevolent and philosophical Franklin introduced into this last-mentioned treaty various stipulations, having for their object to mitigate the necessary horrors of war, abolishing privateering, protecting fishermen and unfortified cities, and providing for the good treatment of prisoners.⁴ The interval between the two armed neutralities is still more remarkable for the appearance of two celebrated works on the rights and duties of neutrals by two Italian jurists, Galiani and Lampredi. Galiani was, as he tells us, ordered to write his book as fast as possible, to defend the conduct of the King of the Two Sicilies in adhering to the Russian League. He published his work at Naples in 1782.⁵ In 1788, Lampredi published his work at Florence.⁶ He expressed his conclusions, founded upon very learned premises, that

¹Parliamentary History of England, vol. xxvi, p. 563.—Speech of Lord Lansdowne, *præsertim*.

²Edinburgh Review for July, 1854, p. 214.

³Elliot's (American) Diplomatic Code, I, pp. 134–168, 334.

⁴Wheaton's *Histoire*, p. 308.

⁵*Dei Doveri dei Principi neutrali verso i Principi guerreggianti, e di questi verso i Principi neutrali*. Napoli, 4to, 1782.

⁶*Del Commercio dei Popoli neutrali in tempo di Guerra*. Firenze.

He had previously published *Juris Publici Universalis, sive Juris Naturae et Gentium, Theoremata*. Liburni, vol. iii, 1776–8.

Mr. Wheaton considers him to be a much abler writer than Galiani. Wheaton's *Hist.* 310.

there was no comparison between the relative importance of the rights of the belligerent and of the neutral, assuming them to be in collision upon the question of enemies' goods on board neutral ships. For what, after all (he says), is the injury sustained by the neutral from the capture of his vessel laden with enemies' goods, if his vessel be restored, and he, as the treaties and usage of nations require, be paid his freight? Merely the delay and the possible loss of a return voyage. On the other hand, if the right of the belligerent be foregone, the fatal consequence may ensue that the entire commerce of the enemy may be carried on under the neutral flag, and thus escape from capture, to the great injury of the belligerent, the main object of whose maritime warfare is to destroy the commercial resources and revenues of his enemy, the sinews of his naval power.

CXCV. It has been said that *all* the members of the armed neutrality abandoned, upon the very next opportunity of their becoming *belligerents*, the creed which they had sought to enforce by arms when *neutrals*. The forward zeal of Sweden in favor of this creed has been noticed. Let us now, having careful reference to dates, look at the conduct of those States.

The armed neutrality was in 1780. The Peace of Versailles was in 1783. The next war, in which Sweden was a *belligerent*, happened in 1788: it was a war against Russia. Her first act was absolutely to renounce the principle of free ships free goods, which she had contended for so furiously as a *neutral*. "It would be too gross an affront" (Mr. Ward observes) "to her justice to suppose that she has two lines of conduct,—one as neutral, the other as belligerent: we will therefore rather suppose that she saw the errors into which the aspiring genius of Russia, or her own impulses, heightened, perhaps, by the incidental injuries inseparable from war, had betrayed her; and that she thought, as her treaties bade her think, that the principle before us could only be matter of convention."¹

Such was the conduct of *Sweden*, practically affirming that this supposed right of the neutral was inconsistent with the clear right of the belligerent. As to *Denmark*, we have seen that in the year of the armed neutrality, 1780, she signed a treaty against the principle, *free ships make free goods*, on the 4th of July, and in favor of it on the 8th. By the convention of 1794, *Denmark* and *Sweden* renewed the *renunciation* of the maxim, *free ships make free goods*, which they had made in their

¹Ward, pp. 164-5.

treaties, about one hundred years before. These treaties had never been abrogated, and by this convention these States declared that they claimed no advantages other than those which were clearly founded upon their respective treaties with the different Powers at war. *Denmark*, moreover, especially confirmed her ancient treaty, referring, in her instructions, to her merchants,¹ to her treaty of 1670 with England, in which it was stipulated that there should be a certificate amongst the ship's papers to prove *that the cargo belonged to a neutral Power*, and ordered her magistrates in 1793 to deliver such necessary certificates.

But what did the author of the League² itself do? Why, on the 8th of February, 1793, Russia herself declared that her treaty with France of 1786, in which the *two* principles which have been so much discussed were contained, was no longer obligatory until the restoration of order in France.³ She went much farther, however, and renewed in the same year her treaty with *England* of 1766, the stipulations of which were, that neutral commerce should be carried on "according to the principles and rules of the law of nations generally recognized."⁴

Nor did she even stop here, but on the same day entered into another treaty with Great Britain, by which the two Powers engaged to prevent neutrals "from giving, on this occasion of common concern to every civilized State, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or property of the French on the sea or in the ports of France."⁵

In the very same year, Great Britain concluded treaties containing articles to the same effect, with Spain,⁶ with Russia,⁷ and with Austria.⁸

France, the most important member of the Russian League, was not the last to throw overboard the doctrine for the propagation of which it was established.

On the 9th of May, 1793,⁹ a decree of the National Convention declared that enemies' goods on board neutral vessels were good prize; that the vessels were to be released and freight paid by the captors.

¹Feb. 22, 1793.

²Manning, p. 272.

³De Martens, vol. v, p. 382.

⁴*Ibid.* 432.

⁵*Ibid.* v. 440.

⁶*Ibid.* 477.

⁷*Ibid.* 485.

⁸*Ibid.* 489.

⁹*Ibid.* 382.

On the 21st of March, 1797, the Executive Directory issued a similar decree.¹

CXCVI. So much for the fruits of the first armed neutrality. The soundness of the principle, and the faith of the engagements, were wafted, with the first breath of war, to those winds which bore the fleets and privateers of the *neutral* league, now become *belligerent*, to execute not the new but the ancient maritime international law.

*"Atque idem venti vela fidemque ferunt."*²

CXCVII. The conduct of the United States of North America with respect to this subject, deserves especial notice. This nation had been the cause of that war during the course of which appeared the first armed neutrality. It was at least her apparent interest to sanction the new law. Still more was she animated to do so by her resentment towards Great Britain and by gratitude to France; but her conduct with respect to this matter has been, under the most trying circumstances, marked not only by perfect consistency, but by preference for duty and right over interest and the expediency of the moment.

The treaty of the United States with France in 1780, was founded upon the stipulations of 1778, by which this Power, as far as her own predilections and private wishes were concerned, was at all times ready to abide.

In her treaty with England of 1795,³ these predilections and wishes, which had found their legitimate issue in particular conventions, were abandoned, and their place was taken by the ancient general law. By the seventeenth article of this treaty, the United States agreed that enemies' property on board her vessels should be confiscated, the ship and the remainder of the cargo being allowed to depart without hindrance; but that, on just suspicion, the vessels themselves might be detained and carried into the nearest port for the purpose of examining and adjudicating upon them.

CXCVIII. It was of course perfectly competent to this Power to make these two different treaties with different States, and to her enduring honor, she adhered to both under circumstances of some difficulty.

¹De Martens, vol. v, 393.

²Ovid, *Ep.* vii.

³De Martens, vol. v, p. 672.

In 1798, France promulgated¹ a new doctrine to the United States, viz., that as this Power was bound to treat France as the *most favored nation*, it was also bound not to allow French property on board American ships to be seized by British cruisers, while they prevented the seizure of British property in the same situation by the French. This demand was refused, and France threatened war in consequence. It is most truly said by Mr. Ward,² that the answers of the United States to France were models of dignified and convincing argument.

"Before the treaty with Great Britain" (it is represented in one of these notes), "the treaty with France existed. It follows, then, that the rights of England being neither diminished nor increased by compact, remained perfectly in their natural state, which is to seize enemies' property wherever found; and this is the received and allowed practice of all nations, where no treaty has intervened." A *new law of nations*, it is pretended, was introduced by the armed neutrality; but who were the parties, and what was their object? "The compact was in its own nature confined, with respect to object and duration. *It did not purport to change, nor could it change permanently and universally, the rights of nations not becoming parties to it.* The desire of establishing universally the principle, that neutral bottoms shall make neutral goods, is perhaps felt by no nation on earth more strongly than by the United States. Perhaps no nation is more deeply interested in its establishment; but the wish to establish a principle is essentially different from a determination that it is already established. The interests of the United States could not fail to produce the wish; their duty forbids them to indulge it, when decided on a mere right."³

"The complaints of the French," said another note of the American Minister to his President,⁴ "had reference, amongst other things, to the abandonment by the Americans of their neutral rights, *in not maintaining the pretended principles of the modern law of nations, that free ships make free goods; and that timber and naval stores are not contraband of war.*

"The necessity, however, for the strong and express stipulations of the armed neutrality itself by all the various Powers which joined it, showed" (as the note went on to state) "that those maxims were not in themselves law, but merely the stipulations of compact; that, by the

¹Ward, p. 167.

²*Ibid.* 167.

³*Ibid.* 168, citing *Collection of Acts*, 198, etc.

⁴*Mr. Pinckney to General Washington.*

real law, belligerents had a right to seize the property of enemies on board the ships of friends; that treaties alone could oblige them to renounce it; and that America, therefore, could not be accused of partiality to Great Britain, *because she did not compel her to renounce it.*"¹

CXCIX. In the year 1795, the United States made a treaty with Spain, including a stipulation the reverse of that contained in their treaty with England in the same year. In the Spanish treaty it is stipulated, that cargoes in neutral ships shall be free, no distinction being made as to who are the proprietors of the merchandises.²

In 1799, the United States entered into a treaty with Prussia, by the 12th article of which they declared, that as experience showed that the maxim, free ships make free goods, had not been respected in any of the wars since 1785, Prussia and the United States should, in a future time of peace, either separately between themselves, or jointly with other Powers, concert measures for the future condition of neutral commerce in time of war; meanwhile these two Powers agree that their ships shall conduct themselves as favorably towards the merchant vessels of the neutrals as the course of the war then existing might permit, observing the general rules of international law.³

But in the next year, 1800, the old French doctrine of free ships free goods, enemy's ships enemy's goods, was incorporated into a treaty between France and the United States.⁴

During the war which commenced between the United States and Great Britain in 1812, the Prize Court of the former uniformly enforced the generally acknowledged rule of international law, that enemies' goods in neutral vessels are liable to capture and confiscation, except as to such Powers with whom the American Government had stipulated, by subsisting treaties, the contrary rule, that free ships should make free goods.⁵

CC. In the treaty of commerce of 1797, between Russia and England, the article which relates to neutral commerce⁶ is silent on the question, and therefore the old law remained unchanged.

In the next year (1798), Russia entered into a treaty with Portugal, in which it was stipulated, that *free ships shall make free goods*, but also that *neutral goods in an enemy's ship should be confiscated.*⁷

¹*State Papers*. 5, 281, 286.

²Article XV. De Martens, vol. vi, p. 154.

³*Ibid.* vi, 676.

⁴*Ibid.* vii, p. 103.—Articles XIV, XV.

⁵Wheaton's *Elem.*, p. 580.—Ed. Lawrence, 1855.

⁶Article X, *ibid.* 362.

⁷Article XXIV, *ibid.* 550.

CCI. The first armed neutrality¹ took its rise, as we have seen, in the ignoble rivalry of contending courtiers and the vanity of a dissolute Empress of Russia. The second armed neutrality had not a more distinguished origin; it was the offspring of a mad Emperor of the same kingdom.

The question of *convoy* is connected with the *right of search*, and the discussion of it belongs to a subsequent chapter; but it should be mentioned here, as having excited some irritation in the Danish and Swedish Courts against England; this, however, had been allayed by the mission of Lord Whitworth, the English Ambassador to Copenhagen.

At this juncture the Russian Emperor Paul claimed, without a shadow of reason,² the island of Malta, which had been recently ceded to the English. He had become Grand Master of the once celebrated order of the knights in that island, and his attachment to this imaginary distinction was supposed to be one of the subjects on which his continually increasing insanity manifested itself. The refusal of England to surrender this island exasperated Paul, and, with an open contempt of the stipulations of an existing treaty,³ he laid an embargo on all British property within his dominions, and with a semi-Asiatic notion of justice, ordered one British vessel to be burned because another had escaped from harm.⁴

The next step of Russia was characteristic; it was to renew the abandoned armed neutrality, as if for the purpose of demonstrating how little the League had ever been concerned with general international justice, and how obviously it had always been intended to injure one particular State. Sweden,⁵ Denmark,⁶ and Prussia⁷ joined the revived confederacy, which contained the old stipulations, with this important addition:—

“That the declaration of the officers who shall command the ship of war, or ships of war, of the King or Emperor, which shall be con-

¹Manning, p. 274.

²He alleged the treaty of 1798, which was a treaty of subsidy, in which no clause affords a pretext for the demand.—De Martens, vol. vi, p. 557.

³The 12th Article provided that, in the event of the breaking out of war, the goods and persons of neither country should be detained or confiscated.

⁴De Martens, vol. vii, p. 155.

⁵*Ibid.*

⁶*Ibid.* 181.

⁷*Ibid.* 188.

voying one or more merchant ships, that the convoy has no contraband goods on board, shall be sufficient; and that no search of his ship, or the other ships of the convoy, shall be permitted. And the better to insure respect to those principles, and the stipulations founded upon them, which their disinterested wishes to preserve the imprescriptible rights of neutral nations have suggested, the High Contracting Parties, to prove their sincerity and justice, will give the strictest orders to their captains, as well of their ships of war as of their merchant ships, to load no part of their ships, or secretly to have on board any articles, which, by virtue of the present Convention, may be considered as contraband; and, for the more completely carrying into execution this command, they will respectively take care to give directions to their Courts of Admiralty to publish it, whenever they shall think it necessary; and, to this end, the regulation which shall contain this prohibition, under the several penalties, shall be printed at the end of the present Act, that no one may plead ignorance."

This attempt to introduce a new positive law upon *contraband*, happily, like the rest of the treaty, abortive, does not require further discussion in this place.

By other articles of the treaty, mutual assistance is promised in case of attack.¹

CCII. The second Russian League was destined to enjoy even a shorter existence than the first. Great Britain began her war upon this new confederacy against her by an attack upon Denmark. Nelson's immortal victory at Copenhagen was followed by another event of great importance at the time, and which demonstrated in what *personal feeling* the new League had originated. There is no despotism, however unlimited, none, however absolute and unquestionable, according to the positive law or usage of the country over which it is exercised, as not to find, sooner or later, some check in the necessities and feelings of mankind. The tyranny of Domitian and Robespierre² became at last unendurable to the poor as well as the rich, and then ensued, by violent means, their death. The ferocious acts of the Emperor Paul, and the well-founded belief that they sprang, in a great measure at least, from a disordered brain, brought about at this critical period a similar result; not, however, from the combination of the humble and great, but from the aristocracy alone. Paul suddenly disappeared from the stage on which he was acting so terrible a part. He was assas-

¹De Martens, vol. vii, p. 172.

²Sed periit postquam cerdonibus esse timendus Coeperat; hoc nocuit Lamiarum caede madenti." *Juv. Sat.* iv, 153.

sinated, and, as it is generally, and certainly not without good warrant, believed, in accordance with the deliberate resolution of the notables of his Court. The act has indeed been defended as a necessary measure of self-defense, no other remedy being supplied for such an emergency by the constitution of Russia. We are only concerned in this work with the result, which was very remarkable. Alexander, the successor to Paul, immediately concluded a treaty with England, which adjusted the dispute. By this treaty, in June, 1801, certain concessions were made by England respecting *convoy*, and it was stipulated that goods embarked in neutral ships should be free, *except contraband and the property of enemies*. Thus was the old rule reestablished between Russia and England, and to this treaty both Sweden and Denmark acceded.¹

CCIII. Among the most remarkable works upon international jurisprudence which the crisis of the second armed neutrality produced, were the *Letters of Sulpicius*, by Lord Grenville, and a *Speech*, afterwards published by the same distinguished statesman, upon the treaty between England and Russia in 1801.

In the *Letters*, Lord Grenville—who had but recently resigned the office of foreign secretary, which he had filled for many years—maintained, with perfect knowledge of the subject, much erudition, great vigor of logic, and manly eloquence, the ancient doctrines of international law against those of the armed neutrality.

In the *Speech*,² he declared that dangerous concessions, with respect to the coasting and colonial trade, to contraband of war and blockade, had been made by Great Britain. These subjects remain to be considered. With respect, however, to enemy's goods on board neutral ships, Lord Grenville admitted that it was fully recognized by the second section of the third article of the Convention, which implied an abandonment of the opposite principle of *free ships free goods*, on the part of the Northern Powers.³

¹De Martens, vol. vii, pp. 260–281, contains the *three* treaties. Russia had only a *few days before* made a treaty with Sweden, embodying the articles of the Armed Neutrality, March, 1801 (De Martens, vol. vii, p. 329), so that, in one and the same week, Russia embodied the two opposite principles in her treaties with the same nation; and it has been gravely argued that the treaties constitute the international law on this subject! Manning, 278.

²The argument was sound; but as subsequent treaties upon the same subject have been contracted between England and Russia, the concessions have no present operation or effect.

³*Vide*, Phillimore's *Commentaries upon International Law*, 3d edition, vol. i, sec. xlix, where this remarkable speech is referred to upon the important question of *permanent* alterations of *general* international law being introduced into a treaty.

PRADIER-FODÉRÉ: *Traité de Droit International Public Européen et Américain*. Paris, 1885-1906

P. Pradier-Fodéré. French publicist; born in 1826; died in 1904; member of the Institute of International Law. His chief work in the domain of international law is his elaborate *Traité de Droit International Public, Européen et Américain*, 1885-1906, 8 volumes.

M. Pradier-Fodéré spent a number of years in South America and became very familiar with Latin-American conditions. His work, as the title shows, considers international law both from the European and American standpoint, and is highly regarded on the continent and in Latin America.

He also published an annotated edition of Vattel, 1863, a translation of Grotius' *De jure belli ac pacis*, 1867, and *Cours de Droit Diplomatique*, 1880.

Volume 8, page 176.—Privateering cast a sinister light upon the maritime rules which preceded the peace of Ryswick (1697) and the Treaty of Utrecht (1713); the vexations to which the English corsairs subjected the navigation of neutral States, especially during the last half of the eighteenth century, along with the violent conduct of the North American ship owners during the independence war of the American colonies, led the most of the European States, upon the appeal of Russia (1780), to unite for the protection of maritime commerce, in time of war, "in order that through the common efforts of all the neutral maritime Powers, there might be established, in behalf of the mercantile navigation of the neutral Nations, a natural system founded upon justice which might serve as a rule to the centuries to come."¹ But this system never took form in a universal maritime

¹The arbitrary proceedings, injurious to the neutrals, led Russia in 1780, to establish in behalf of the navigation and of the commerce of the neutrals, a system of principles which has since been termed the system of *armed neutrality*. The belligerent Powers (at that time they were France, Spain and Great Britain) which should have refused to recognize this system, were to have been constrained by a naval force of the neutral nations. The system of armed neutrality was formally notified by Russia to the Courts of Versailles, of Madrid and of London, and the neutral Powers having been invited to join this system it was immediately adopted by Denmark, Sweden, Holland, Prussia, Austria, Portugal and the Two Sicilies which entered into special conventions with Russia in regard to this matter. The most of these Powers were not satisfied to make their accession to this system known to the belligerent Powers, but they notified the fact to each other, and several of them made answer to that notification by forwarding an act of acceptance, so that a conventional league was established between these States, a real defensive alliance, with the object of insuring the rights of the neutrals. Furthermore, the Powers of the North decided in principle that within the Baltic Sea, as a closed sea,

code, and what is more, during the various wars which followed, the principles upon which it was based have not been observed by the very Powers which had been the first to propose it. A second league, likewise brought about by Russia in 1800, yielded no greater results, received the approval of fewer States than that of 1780 and came to an end after a short time.¹

Page 906, Section 3230.—It has been justly remarked that *armed neutrality* to which reference is made so frequently, that is to say, the neutrality *protected by an armed force* organized by a neutral Power, solely with that object in view, is not a special kind of neutrality, but merely a more or less efficacious manner of protecting ordinary neutrality if the latter stands in danger of being violated by powerful belligerents. Furthermore, any neutrality must be able to defend its

hostilities should not be permitted. France and Spain looked with favor upon the system of armed neutrality, but England declared that she would continue to abide by the clearest and most generally accepted principles of the law of nations, and by the stipulations of her treaties of commerce. But in view of the energetic attitude of the neutral Powers which had manifested a firm will to defend their pretensions in common, she enjoined upon her ship owners to act less rigorously toward them. But there is no league, however closely formed, which does not end by disintegrating, and the league of armed neutrality did not escape this fate during the war of the French Revolution. Russia herself which had been its original instrumentality, abandoned it. *Sec: Mémoire ou Précis historique sur la neutralité armée et son origine, suivi de pièces justificatives*, by Count de Goëtz (Basle, 1801); *Nouveau mémoire ou précis historique sur l'association des Puissances neutres connue sous le nom de la neutralité armée, avec des pièces justificatives*, 1798; Castéra, *Histoire de Catherine II*. In regard to this league, its antecedents, the laborious negotiations which preceded its conclusion and the facts which led thereto, it is best to read up on these matters in the very substantial and complete work of Mr. Paul Fauchille, entitled: *French Diplomacy and the League of Neutrals of 1780* (Paris, 1893).

The wars of those troublous times brought again home to the Powers of the North the necessity to insure the rights of the neutral flag by means of defensive alliances. Hence, the *second armed neutrality* in 1800. To this effect, Russia concluded treaties with Sweden, Denmark and Prussia. The principles of the *first armed neutrality* were resanctioned by it, increased and interpreted as appeared then necessary. Yet, this new armed neutrality was not adopted by as many Powers as the first; its life was only of short duration. Six months after its conclusion, Great Britain succeeded in forming an alliance with Russia through a maritime convention to which Denmark and Sweden were compelled to accede. In 1807 Russia informed England that she regarded the maritime convention as annulled and reaffirmed the basis of the armed neutrality by pledging herself never to depart from that system. Later on, at the time of the conclusion of the Oerebro Treaty between Sweden, England and Russia (1812), neither the maritime convention nor the system of armed neutrality were reestablished. See: Klüber, *Droit des gens moderne de l'Europe*, Sections 307, 308, 309, edition of 1874, pp. 440, 441.

rights, and, in this sense, we may affirm that *neutrality must be armed*. When threatened, then without overstepping their neutrality, the neutral States may evidently increase their forces and hold them ready, so that in case of necessity they may by force of arms oppose any attempt against their position as neutrals, provided that the measures taken by them do not exceed the defensive needs of the legitimate protection of their rights. This contingency, when such measures are to be taken, presents itself especially in the case where neutral States should be exposed to find their neutrality violated by a belligerent whose territory is nearby, vicinal or contiguous. The defense of its neutrality is a national and international duty of every neutral State; it prevents wars from extending over large areas; it limits the arena of battle.¹ When neutral States observe neutrality without taking military measures to defend it in case of need, neutrality is said to be peaceful in contradistinction to *armed neutrality*; but it is an inappropriate expression, because any neutrality, even *armed neutrality*, is a *peaceful neutrality*, in view of the fact that neutrals arming solely to protect their neutrality do so only to remain at peace. The expressions *peaceful* and *armed* do not, moreover, express necessarily opposite ideas: the former refers to a moral disposition, and the second expresses a fact. It must be recognized that this inexact designation is merely another manifestation of the tendency of writers to indulge in subtle and clever language. The term *armed neutrality* has also been given to certain alliances which, because of the inefficiency of their isolated forces, various neutral States have contracted in view of a common defense, when their interests were identic, in order to compel belligerents to recognize their rights and, betimes, their pretensions. The *armed neutralities* of 1780 and of 1800 between the Powers of the North, are a very memorable example of such alliances, although, according to the observation of Kleen, they were not confined to the defense of rights or recognized; they did not institute new legislation; and they have been nothing more than an *armed neutrality* in the ordinary sense of the word.²

¹Evidently it is not necessary that the neutrals be challenged, in order to justify their military measures calculated to defend their neutrality against the enterprises of the belligerents; imminence of such a danger sufficiently justifies them to resort to these measures.

²Kleen, *Lois et usages de la neutralité*, 1898, book I, chap. 2, sec. 22, vol. i, p. 119, note 1.

TRESCOT: *The Diplomacy of the Revolution*. New York, 1852.

William Henry Trescot. American publicist and diplomat; born in 1822; died in 1898; studied law at Harvard and was admitted to the bar in 1843; assistant secretary of state in 1860; member of State Legislature of South Carolina; counsel for United States before Halifax Fishery Commission in 1877; minister to Chile and delegate to Pan American Congress in Washington. His writings include *The Diplomacy of the Revolution*, 1852, *An American View of the Eastern Question*, 1854, and *The Diplomatic History of the Administrations of Washington and Adams*, 1857.

Page 72.—The second event to which reference has been made as exciting the hopes of American statesmen, and exercising a large though indirect influence upon the relative position of the belligerents, was the formation of the Armed Neutrality of 1780.¹ Its history is important under two aspects—first, as affecting the practical combination of European nations, and second, as declaring a new system of maritime law. The treaty of 1763 had, to a great extent, separated England from a continental connexion, and in the war with her colonies she was absolutely without an ally. The treaty between France and the United States, the declaration of war by Spain, the very uncertain temper of Holland, compelled England to renew, if possible, an alliance with some of the European Powers. Sir James Harris, afterwards better known as Lord Malmesbury, was despatched to St. Petersburg to effect, if possible, a political combination. Sanguine, adroit, and bold, he hoped too soon, moved too fast, and ventured too much; and without paradox it may be said that his very ability disabled him. He found the power of the court divided between Potemkin, a rising, and Panin, a setting favorite. He secured the one, but provoked the other; and although he estimated their positions rightly, he found, to use the apt comparison of Goertz, that if Count Panin was “a star that hastened visibly to its decline, it was

¹Flassans, *Diplomatie Française*, vol. vii. Garden's *Traité de Paix*, tome cinquième, chap. xxi. *Diaries and Correspondence of the Earl of Malmesbury*. *Notices Historiques sur le Système de la Neutralité Armée, et son Origine*, par M. le Comte de Goertz. *Diplom. Corresp. of the Revolution*. Hautefeuille, *Droits et Devoirs des Nations Neutres; Discours Préliminaire*. Wheaton's *History of International Law*.

still above the horizon, and those even who most desired to see it disappear, still believed that they stood in need of its light." Having obtained, through the influence of Potemkin, two private interviews with the Empress Catharine, he succeeded, after some important concessions, in persuading her to consent to an English alliance. But when he received, in reply to his home-communications, full powers to negotiate such a treaty, he discovered to his mortification that Panin, to whom the English alliance was both politically and personally distasteful, and from whom the preliminary interviews with Catharine had been carefully concealed, had succeeded in undoing his work, and as Foreign Minister was prepared with a formal refusal to negotiate.

As if to remedy his disappointment, however, news soon arrived at St. Petersburg of the seizure of two Russian vessels laden with corn and taken by the Spaniards in the Mediterranean. The indignation of Catharine, peculiarly sensitive as to her commerce, blazed out; and, supported by Potemkin, Lord Malmesbury, with great ability, used the fortunate accident to persuade her to demand from Spain peremptory satisfaction, and at the same time to fit out a fleet at Cronstadt to be sent to sea at the first opportunity. These preparations were again carefully concealed from Count Panin, and Lord Malmesbury naturally and joyfully anticipated their inevitable result—an embroilment with Spain and her belligerent allies. Panin soon discovered the extent and direction of this well-contrived manoeuvre, and defeated it by a policy at once bold and subtle. He expressed deep sympathy with the natural indignation of the Empress at this violation of her neutral rights, but suggested that instead of being an exceptional case needing correction, it proceeded from a false system of public law, against which now was the time to protest. If England agreed with Russia in condemning the seizure, the condemnation by Russia of the principle would be equally acceptable. He therefore persuaded the Empress to publish a declaration to all the belligerents that such a violation of neutral rights would not be tolerated, and to call upon all the northern and neutral Powers to make common cause in defense of the just principles of maritime law. He satisfied her that this was not only conformable to the desire of the English Ambassador, but placed her at the head of a great league for a high and worthy purpose. He further induced her to keep her communications to the foreign courts secret until they should have reached their destination. The despatches were written

and the couriers started, without any discovery by Lord Malmesbury of the nature of their missives. The Empress indeed informed him that in a day or two such communications would be made to his court as would amply satisfy their desires, and this gracious news he himself hastened to communicate. Great then was the surprise and indignation of the English Cabinet when they received from Russia a formal declaration of maritime law contradicting the whole practice of the English Government, and striking at the foundation of the system which England had always haughtily maintained, and could at this very juncture least of all afford to dispense with. Russia demanded that free ships should make free goods—that even the coasting trade of belligerents should be opened to neutrals—that contraband should be limited and blockades stringent. England received the declaration coldly. The northern Powers eagerly combined with Russia to form a league in the defense of this system, and the belligerents whom Lord Malmesbury hoped to discomfort seized their advantage. Spain made restitution, and in recognizing the justice of the new code pleaded the arbitrary violence of England as her excuse for having violated it; while France approved the magnanimous wisdom of the Empress, and readily consented to what, by the ordinances of 1778, she had already enacted in principle as the law of her own marine. Unwilling to abandon principles which she had openly avowed and always acted upon, England saw her last hope of a continental alliance destroyed by this European league. Irritated by Holland's evasion as to her treaty obligations, and the adhesion of that republic to the armed neutrality soon after, England declared war against the Dutch. The practical result of the Armed Neutrality therefore was to add one more to the open enemies of England, and to render still more impracticable any compensating alliance. In this view it was certainly to the United States an event of great importance.

Considered as a declaration of a new system of maritime law, intended to guard neutral rights and check the supreme dominion of the English navy, it is far from deserving the importance attached to it at the time. In the first place it took its rise in an accidental intrigue, and was never at any time more than a diplomatic by-play of temporary interest. It passed its short life without activity, and died of natural exhaustion: and the Empress herself judged it rightly when she told Lord Malmesbury that it should be called rather *nullité armée* than *neutralité armée*. The great maritime belligerent Powers who

acceded to it, never recognized its principles except when convenient, and it did not even reflect the practice of Russia itself. For in a despatch dated 26th May, 1780, Lord Malmesbury says of Admiral Greig, an eminent officer in the Russian service, "As soon as he read the declaration and saw the grounds on which the instructions were to be made, he collected the various sentences which had been pronounced last war in the Archipelago by the Russian tribunal instituted for that purpose, and at which he frequently presided, on neutral ships. After proving in the clearest manner that they confiscated and condemned Turkish property wherever they found it, and the only prizes they made were such property on board neutral ships, he gave in the whole to Count Czernicheff, signifying that as a faithful and affectionate servant of the Empress he thought himself obliged to set before her eyes, that if she carried her present measures into execution she would act in direct contradiction to herself."¹

In the next place the declaration, "free ships, free goods," was not the statement of a principle, but the expression of an interest—an interest as shifting as any of those movable necessities which have always regulated political combinations, never recognized in war by those very belligerents who have declaimed about it in peace. The effort to elevate it into an international law has been only a struggle to legalize one sort of selfishness at the expense of another; and such a rule can take its place only in a system which, in the emphatic language of Sir Wm. Scott, "if it is consistent, has for its real purpose an entire abolition of capture in war—that is, in other words, to change the nature of hostility as it has ever existed among mankind, and to introduce a state of things not yet seen in the world—that of a military war and a commercial peace."²

The Congress of the United States, however, fancied that they saw in the sentiment of this purely selfish coalition, indication of such a general liberality of political judgment as would respond to the spirit of their resistance. Although discouraged by the more sober wisdom and better information of the French court, they expressed in strong resolutions their approbation of the code of the neutrality, forwarded these resolutions through Mr. Adams to the various courts who had entered into the league, and finally, on December 19, 1780, despatched Mr. Francis Dana as minister to St. Petersburg. In their instruc-

¹*Malmesbury's Diaries*, etc., vol. i, p. 264.

²Judgment of the High Court of Admiralty upon the Swedish convoy, in the case of the ship *Maria*, Paulsen, master.

tions they say to him, "You will readily perceive that it must be a leading and capital point if these United States shall be formally admitted as a party to the convention of the neutral maritime Powers for maintaining the freedom of commerce. This regulation, in which the Empress is deeply interested, and from which she has derived so much glory, will open the way for your favorable reception, which we have greater reason to expect, as she has publicly invited the belligerent Powers to accede thereto."¹

One would have supposed that the maintenance of their own freedom was quite enough for the attention of Congress; and it was, to say the least, a broad interpretation of Catharine's invitation to suppose themselves included under the term belligerents. But it must be said for the statesmen of that day, that they never forgot what they intended to be; and the uniform language of their diplomacy was bold even to what their circumstances might have stigmatized as presumption. But the anxiety with which they sought to introduce themselves into the affairs of Europe was ample evidence that they did not intend their independence to be isolation. They had resolved to be one of the nations of the earth—one to whom the politics of the world were to be matter of practical interest, and they considered their commerce as the means of direct connexion. It will be now generally admitted that any participation by the United States in this coalition would have been a useless complication of their affairs, serving no national purpose and contributing to no general good. The opportunity, however, was never offered; for Mr. Dana's efforts, however able, were very useless. His presence in St. Petersburg resulted only in affording Lord Malmesbury the small triumph of preventing his public reception by Russia, even after the acknowledged independence of the United States, and enabling him to close his career of disappointment at that court by trusting that he had "suspended the appearance of the *American agent* here in public, till such time as it may take place without having any disagreeable or extraordinary effect."²

¹*Secret Journal of Congress*, vol. ii, p. 358.

²*Malmesbury's Diaries*, etc., vol. i, p. 506. Despatch to Lord Grantham, March 11, 1783.

TWISS: *The Law of Nations considered as Independent Political Communities. On the Rights and Duties of Nations in Time of War.* Oxford, 1863.

Sir Travers Twiss, British publicist; born in 1809; died in 1897. As professor at the University of Oxford, as a practicing international lawyer, the authority of Sir Travers Twiss is justly great. Among his chief works are:—*The Rights and Duties of Nations in Time of Peace*, 1861, second edition 1884, and *The Rights and Duties of Nations in Time of War*, 1863. The two works appeared in a French edition in 1887.

Volume II, page 267.—One result of the armed neutrality of 1780 was to lay the foundation of a common concert amongst the continental Powers on the subject of contraband of war, although such concert could only take effect amongst the Powers which were parties to the treaties and declarations;¹ for it was not attempted on occasion of either of the armed neutralities of 1780 or 1800 to set aside the treaty-engagements as to contraband of war, which existed between the Powers, which were parties to either Armed Neutrality, respectively and Great Britain; on the contrary, there were express stipulations that in the matter of contraband, each State should adhere to its existing engagements with other States. It is consistent therefore with the custom of contracting which prevails amongst the European Powers, that the same nation should have different conventions on the subject of contraband of war with different nations. "Hence it arises, that the catalogue of contraband has varied very much," as observed by Lord Stowell, "and sometimes in such a manner as to make it very difficult to assign the reason of the variations, owing to particular circumstances, the history of which has not accompanied the history of the decisions."²

¹The Declarations of Prussia on the subject of contraband of war will be found in Martens, vol. iii, p. 247; and that of Austria in Martens, vol. iii, p. 258.

²The *Jonge Margaretha*, 1 Ch. Robinson, p. 192.

WALKER: *The Science of International Law*. London, 1893.

Thomas Alfred Walker. English publicist and clergyman; born in 1862; fellow and lecturer of Peterhouse College, Cambridge; senior Whiwell scholar in international law, 1884; examiner in constitutional history, roman law and jurisprudence in University of London; member of the International Law Association and of several other societies interested in international and social problems. Among his publications are: *The Science of International Law*, 1893; *A Manual of Public International Law*, 1895; *A History of the Law of Nations*, volume 1, 1899.

Page 303.—The armed neutrality of 1780 was an outcome of the intrigues of Count Panin working in the interests of France and Prussia upon the vanity of the Empress Catharine, who was herself well-inclined to British views.¹ Already in 1778 Sweden and Denmark had approached the Empress with formal proposals for the formation of a combined fleet for the protection of the neutral trade of the north against all attack.² It was not until early in 1780 that, chafing under the indignities to which she deemed herself to have been subjected by the submission of her neutral commerce to the belligerent right of search, she caused to be presented to the three belligerent Courts of London, Versailles and Madrid a Declaration, wherein she set out certain principles which, without departing from the strict and rigorous neutrality which she had hitherto inviolably observed, she expressed herself determined alike to adopt and effectively defend.³ She took this step, she said, with the more confidence "qu'Elle trouve consignés ces principes dans le droit primitif des peuples, que toute nation est fondée à réclamer, et que les Puissances belligérantes ne sauroient les invalider sans violer les loix de la neutralité, et sans désavouer les maximes qu'elles ont adoptées, nommément dans différens traités et engagements publics."

¹*Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 219 *et seq.* Sir J. Harris to Viscount Stormont, April 24/May 5, 1780; *Ibid.* i. 299. Same to Same, 15/26 May, 1780, *Ibid.* i. 307. Sir James Harris to Hugh Elliott, 7/18 Feb., 1782, *Ibid.* i, pp. 485 *et seq.*

²Mr. Harris to the Earl of Suffolk, 11/22 Dec., 1778, *Ibid.* i, pp. 219-220. Lord Hillsborough was unfortunate enough to excite the wrath of Catharine by a jesting remark that "Her Imperial Majesty's commercial navy was already the best guarded in Europe, as she had a man-of-war to each merchantman." *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 219.

³Declaration of Her Majesty the Empress of all the Russias to the Courts of London, Versailles and Madrid, Martens, *Recueil*, vol. ii, p. 74.

The principles proclaimed in this imposing fashion in the name of neutrality and universal justice are set forth in five articles.

1. Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre.

2. Que les effets appartenans aux sujets des dites Puissances en guerre, soient libres sur les vaisseaux neutres à l'exception des marchandises de contrebande.

3. Que l'Impératrice se tient quant à la fixation de celles-ci à ce qui est énoncé dans l'Art. X et XI de son traité de commerce avec la Grande-Bretagne, en étendant ces obligations à toutes les Puissances en guerre.

4. Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

5. Que ces principes servent de règle dans les procédures et les jugemens sur la légalité des prises.¹

These articles became the basis of the First Armed Neutrality.² The reception accorded to the Imperial Declaration by the various Powers of Europe, and its ultimate fate forms a sufficient comment upon its character.

Great Britain, struggling desperately with a host of foes, with the combined force of her revolted Colonies and of her ancient enemies France and Spain, could little afford to forfeit the goodwill of the

¹Martens, *Recueil*, vol. ii, p. 75. *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 291.

²The precise extent of the term *contraband* being in the various acts of accession set out in detail, and the fifth article of the Imperial program being further explained, the principles of the first armed neutrality were four; viz.

(1) "Que les vaisseaux neutres puissent naviguer librement de port en port et sur les côtes des nations en guerre."

(2) "Que les effets appartenans aux sujets des dites Puissances en guerre, soient libres sur les vaisseaux neutres à l'exception des marchandises de contrebande."

(3) "Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a par la disposition de la Puissance, qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer."

(4) "Que les vaisseaux neutres ne peuvent être arrêtés que sur justes causes et faits évidens; qu'ils soient jugés sans retard; que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens, qu'on accorde à ceux qui ont fait des pertes sans avoir été en faute, il soit rendu une satisfaction complète pour l'insulte fait au pavillon."

See the Convention between Russia and Denmark, July 9, 1780; Martens, *Recueil*, vol. ii, pp. 103-107.

first Power of the North. Yet the British Government, preferring to risk the loss of an all-powerful ally rather than adopt that attitude of politic complaisance which their ambassador at St. Petersburg—the astute and able Harris¹—urgently advised,² returned a reply of simple and unyielding dignity. During the whole course of the war, said the ministers of George III, in which His Majesty was then engaged in consequence of the aggression of France and Spain, he had manifested those sentiments of justice, equity and moderation which were wont to govern all his dealings. He had regulated his conduct towards friendly and neutral Powers in accordance with theirs in his regard, conforming it to the clearest and most generally recognized principles of the law of nations—the sole standard for nations who were bound by no particular treaty—and to the tenor of his different engagements with other Powers, engagements which had varied the normal law by mutual stipulations, and that in many various ways, according to the will and convenience of the contracting parties. Firmly bound to Her Imperial Majesty by the ties of mutual amity and of common interest, he had from the very beginning of the war given strict orders for the display of respect to her flag and to the commerce of her subjects, in accordance with the law of nations, and the tenor of his engagements with her, engagements which he would fulfil with the most scrupulous precision. These orders had been renewed, and, should the least violation occur, his admiralty tribunals, guided in their decisions solely and entirely by the general law of nations and the stipulations of particular treaties, would redress the wrong in such fashion, that Her Majesty would recognize in their judgments that spirit of justice by which she was herself animated.³

A singular contrast to this calm and self-respecting language was afforded by the enthusiastic acclamations of France and Spain.

Louis XVI, moved by no other inducement in the war in which he found himself engaged than by the attachment which he felt for the

¹James Harris, afterwards first Earl of Malmesbury, a diplomatist whose eminent abilities displayed in a peculiarly successful career amply justified Mirabeau's fear of "cet audacieux et rusé Harris" and Talleyrand's opinion of him as the most able English minister of his day. *Diaries and Correspondence of James Harris, First Earl of Malmesbury*, edited by his grandson, the third Earl. Introductory Memoir, xvii.

²Harris to Viscount Stormont, 13/24 Dec., 1780; *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 368-9.

³Reply of the Court of London to the Declaration of the Empress of Russia concerning neutral commerce, dated Feb. 28, 1780, and presented at the Court of London, April 1, 1780. Martens, *Recueil*, vol. iv, pp. 345-346.

principle of the liberty of the seas, could only experience a lively satisfaction in seeing the adoption of that same principle by Imperial Russia. "Ce que Sa Majesté Impériale réclame de la part des Puissances belligérantes, n'est autre chose, que les règles prescrites à la marine Française, et dont l'exécution est maintenue avec une exactitude connue et applaudie de toute l'Europe." It would be unnecessary for His Majesty to give new orders for the care of neutral navigation over and above the ordinary regulations in force, since the Empress had declared for a system which His Majesty maintained at the price of his people's blood, and had demanded those very laws which he would desire to make the basis of the maritime code of all nations.¹

The rules proposed by the Empress of Russia, declared His Catholic Majesty, then engaged in the blockade of Gibraltar, were those which had always guided his conduct, and which he as a neutral had tried by all means possible, but without effect, to induce England to adopt, and which only the conduct of that Power had compelled him as a belligerent to depart from in self-defense.²

Nor were other Powers wanting to swell the chorus of applause. Denmark³ and Sweden,⁴ who had been the first to agitate for the formation of an armed neutral league, Prussia,⁵—whose ruler was now animated by the most inveterate hostility towards England,—Austria⁶ and the Empire,⁷ the Two Sicilies⁸ and Portugal⁹ acceded to the armed neutrality. It was in vain that Great Britain appealed to the faith of treaties and to the history of the past.¹⁰ Her utmost efforts hardly

¹Reply of the Court of France to the Declaration of the Empress of Russia, April 25, 1780. Martens, *Recueil*, vol. iv, pp. 346-348.

²Reply of the Court of Spain to the Declaration of the Empress of Russia, April 18, 1780. *Ibid.* pp. 348-350.

³July 9, 1780; *Ibid.* ii, p. 103; iv, p. 361.

⁴Sept. 9, 1780; *Ibid.* ii, p. 110; iv, pp. 369, 370.

⁵May 8, 1781; *Ibid.* ii, p. 130. Sir James Harris to Viscount Stormont, 30 April/11 May, 1781; *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 420.

⁶1784-5; Martens, *Recueil*, vol. ii, p. 620.

⁷Oct. 9, 1781; *Ibid.* ii, p. 171.

⁸Feb. 10, 1783; *Ibid.* ii, p. 274.

⁹July 13, 1782; *Ibid.* ii, p. 208.

¹⁰"Treaties can be changed only by the mutual accord of the contracting parties, and, so long as they subsist, they are equally obligatory in all cases alike on the one and the other." Reply of the Court of London to the Declaration of the King of Sweden. Martens, *Recueil*, vol. iv, p. 369.

sufficed to restrain the Empress from active furtherance of her principles.

The Dutch, too, between whom and the English a rupture had been swiftly preparing in consequence of the refusal by Holland of the assistance to which she was bound by treaty with England, and of the intimate relations of amity and commerce entered into between the United Provinces and the revolted American colonies,¹ hastened to secure admittance into the Neutral League.² It seemed as though the whole civilized world were rising against the maritime supremacy of England. But England was not slow to accept the challenge. Four days before³ the acceptance of the accession of Holland to the armed neutrality the British had, to the astonishment of Russia and the no small rage of Frederick,⁴ declared war against the United Provinces, and the Dutch, struggling in vain to enlist the active assistance of the Neutral Powers, secured but a bare offer of mediation, and were obliged to bear the full brunt of an unsuccessful war.⁵

The principles of the armed neutrality had not been sanctified by the practice of the parties to it in days before their trading profits were bound up with the interests of the neutral flag, and were violated by those same parties when first they exchanged their neutral character for that of belligerents. So far were France and Spain from adopting before 1780 the principle "free ships, free goods" that they regularly asserted the principles of "enemy ships, enemy goods," and "enemy goods, enemy ships," principles now kept carefully in the background. Up to the very moment of the presentation of the Imperial Declaration Spain followed the stricter practice with such severity as well-nigh drove Russia in self-defence into the arms of England.⁶ Russia herself had during her recent Turkish war confiscated Turkish property wherever found, and the only prize she made was, as her Admiral honestly confessed, of such property captured under the neutral flag.⁷ And in their war of 1788 Russia and Sweden alike

¹*Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 341, 380. Martens, *Recueil*, vol. ii, p. 76.

²Dec. 24, 1780; Martens, *Recueil*, vol. ii, p. 117; iv, p. 379.

³Dec. 20, 1780.

⁴"Puisque les Anglais veulent la guerre avec tout le monde, ils l'auront," cried Frederick when he heard of the English declaration. Mr. Elliott to Viscount Stormont, *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 383.

⁵*Ibid.* i, p. 385. Martens, *Recueil*, vol. iv, pp. 389 *et seq.*

⁶*Diaries and Correspondence of the Earl of Malmesbury*, vol. i, pp. 278-279.

⁷Sir James Harris to Viscount Stormont, 15/26 May, 1780, *Diaries and Correspondence of the Earl of Malmesbury*, vol. i, p. 306.

renounced the principles which they had publicly declared for but eight short years before.¹

After the movement of 1778-80, indeed, the combined rules "free ships, free goods; enemy ships, enemy goods" advanced in favor, and were embodied in numerous treaties, France now taking the lead in their support.² But there was still no perfect consistency in the engagements of the several Powers; sometimes the principle "free ships, free goods" was adopted without the companion jingle;³ sometimes a different rule was followed by the same Power at the same period with different states, or even with the same state at different periods.⁴ In the main, however, the principle of the freedom of the neutral flag seemed well on the way to general acceptance, when a new phase was entered upon in the outbreak of the wars of the French Revolution. The passions of the combatants in that great struggle were aroused too fiercely for any improved regard of neutral rights. France in declaring good prize the goods of an enemy found under the neutral flag⁵ was the first to repudiate her recently formed engagements, and Russia herself abandoned the high moral notions of which she had been the fervent preacher, to adopt with England "the principle generally recognized and the precepts of the law of nations,"⁶ to wit, that old rule of the *Consolato del Mare* which her ally had so long and so consistently maintained. Nor were the rest of the parties to the armed neutrality slow to follow this suggestive example.⁷ The United States

¹Cf. Martens, *Recueil*, vol. vi, p. 210.

²Treaties of France and U. S. 1778, France and Mecklenburg 1779, Holland and U. S. 1782, Sweden and U. S. 1783, France and Great Britain 1786, France and U. S. 1800: Martens, *Recueil*, vol. i, p. 695; ii, pp. 41, 255, 332, 693; vii, pp. 56 and 490; Chalmers, *Treaties*, vol. i, p. 530.

³Treaties of France and Holland 1785, Prussia and U. S. 1785, France and Hamburg 1789, U. S. and Spain 1795, U. S. and Tripoli 1796, Russia and Portugal 1798; Martens, *Recueil*, vol. ii, pp. 571, 616; iii, p. 159; vi, p. 574; vii, pp. 147 and 267.

⁴Treaty of U. S. and Great Britain, 1795; Martens, *Recueil*, vol. vi, p. 368.

⁵See the Decrees of the National Convention of May 9 and July 17, 1793, and the Arrêté of the Executive Directory of March 2, 1797: Martens, *Recueil*, vol. vi, pp. 757-9 and 769.

The Law of Jan. 18, 1798, laid down the principle that "L'état d'un navire, en ce qui concerne la qualité de neutre ou d'ennemi, est déterminé par sa cargaison." All vessels carrying English goods were accordingly declared good prize. Martens, *Recueil*, vol. vi, pp. 774-5.

⁶Treaty of Great Britain and Russia 1797, Art. 10, Martens, *Recueil*, vol. vi, p. 727; see *ibid.* v, pp. 109, 115.

⁷Treaties of Great Britain and Spain, Great Britain and Prussia, Great Britain and the Empire 1793; *ibid.* v, pp. 150, 168, 170.

remained, and for obvious reasons, the only consistent supporter of the privilege of the neutral carrier.¹

But the day of "free ships, free goods" was not yet over. In the first few months of the year 1800 A. D. the Northern Powers again drew together in the second armed neutrality.² Arising immediately in the resentment of the mad Emperor Paul at the conduct of Great Britain in retaining the island of Malta in contravention of what he conceived to be his rights as Grand Master of the Knights of St. John,³ its more public occasion was the recent irritation caused in the North by the attitude of England on the subject of the protection afforded by neutral convoy.⁴

Early in the second half of the eighteenth century Sweden and Denmark had attempted to set up as a neutral right the immunity from belligerent search of merchantmen sailing under the convoy of a neutral man-of-war.⁵ The question, however, became of more pressing importance in the last decade of the century, when the number of such convoys was largely increased in consequence of the action of the combatants in the French revolutionary struggle; and more especially after the issue of the French decrees denouncing the penalty of confiscation against the neutral ship-owner who should engage in carrying English goods, and the pirate's death to the neutral seaman who should venture to sign articles in the English service.⁶ Then the irritation of the disputants rose to fever heat in consequence of a succession of exciting incidents.

In 1798 a Swedish convoy was after some slight display of force in the British Channel brought in for adjudication in the British Prize Court, and condemned by Sir William Scott on the ground of resistance.⁷

In December, 1799, occurred a more spirited affair in the straits of Gibraltar between the English squadron of observation and a Danish

¹Treaties of U. S. and Spain 1795, U. S. and Prussia 1789, U. S. and France 1800; *ibid.* vi, pp. 154 and 676; vi, p. 103.

²*Traité et autres actes relatifs à la nouvelle association maritime*; Martens, *Supplément*, vol. ii, pp. 344-475.

³Cf. Martens, *Recueil*, vol. vii, p. 156.

⁴Manning, *Law of Nations*, Book V, chap. XI.

⁵The principle was adopted in the following treaties: United States and Prussia, 1785, France and Russia, 1786-7, Two Sicilies and Russia, 1787, Portugal and Russia, 1787 and 1798, United States and France, 1800. Martens, *Recueil*, vol. ii, p. 572; iii, pp. 17, 45, 119; vii, pp. 266, 493.

⁶Arrêté of the Executive Directory of Oct. 29, 1798.

⁷The *Maria*, 1 C. Rob. 340.

convoy, the Danish commander, in pursuance of his instructions, firing on the boats of the English search party. Mr. Merry, the chargé d'affaires at Copenhagen, immediately demanded an explanation and disavowal of the action of the Danish captain.¹ Count Bernstorff, however, far from complying with the demand, sought to justify the conduct of the officer, coupling with a denial of the right of belligerents to search merchantmen under convoy an answering demand for reparation.²

The dispute was still unsettled when on July 25, 1800, the Danish and British navies again came into hostile collision, and Captain Krabbe of the *Freya*, a Danish frigate convoying six merchantmen, having refused to permit the search of his charge in the British Channel, was, after a smart action with a British squadron, brought in with the convoy to the Downs.³ The Danish Government in their turn demanded prompt satisfaction for this most public insult to their neutral national flag, and an immediate restitution of the captured vessels. But Great Britain showed no sign of a willingness to yield. Lord Whitworth was instantly despatched on a special mission to Copenhagen, but a British fleet entered the Sound to lend weight to his representations. A lively passage at arms ensued,⁴ Great Britain defending the action of her officers as grounded in the plainest principles of the law of nations, whilst Count Bernstorff treated the capture of the convoy as an altogether unwarranted invasion of neutral rights. Finally, however, the negotiators agreed on August 29, 1800, upon a convention for the temporary settlement of the contested question.⁵ But a new and more formidable disputant was already in the field. On August 16, 1800, the Emperor Paul, to whom the Danish Government had made early approaches, issued a declaration wherein, reciting the history of the recent action of the English with regard to neutral convoys, he invited Sweden, Denmark, and Prussia to concur with him in measures for the establishment in full force of the principles of the Armed Neutrality.⁶ Nor did Paul content himself with empty

¹Mr. Merry to Count Bernstorff, April 10, 1800; Martens, *Supplément*, vol. ii, p. 347.

²Count Bernstorff to Mr. Merry, April 19, 1800; Martens, *Supplément*, vol. ii, p. 350.

³Count de Wedel-Jarlsberg to Lord Grenville, July 29, 1800; *ibid.* ii, p. 353. *Memoirs and Correspondence of the Marquis Wellesley*, vol. ii, p. 116.

⁴Martens, *Supplément*, vol. ii, pp. 359 et seq.

⁵Martens, *Recueil*, vol. vii, p. 426.

⁶Martens, *Supplément*, vol. ii, p. 368.

words. Apprised of the appearance of the English squadron in the Sound, he ordered the sequestration of all English property within his dominions. The arrival of the news of the signature, on the very day (Aug. 29) of the issue of his edict, of the Anglo-Danish convention momentarily disconcerted his plans, but, a new source of irritation against England being inopportunately supplied by the non-fulfilment of his singular Maltese dreams, he started afresh on his career of violence. An embargo was laid on British shipping in Russian ports, and, when two British vessels made their escape by force from their anchorage in the port of Narva, a third which remained was committed to the flames. Nor were other Powers wanting to excite to frenzy a brain but too palpably disordered. Spain lent fuel to the conflagration by complaining of the irregular impressment by an English squadron of a Swedish galliot for the purpose of cutting out a couple of Spanish frigates in the harbour of Barcelona,¹ and Prussia supported her in an extraordinary and altogether unjustifiable demand upon Sweden for the release of the captured vessels. It was a singular view of neutral rights which was expounded by these strange allies: Spain excluded all Swedish vessels from her ports by way of reprisal for the refusal of Sweden to be hurried into forcible measures against England,² and Prussian troops entered the ports of the neutral city of Hamburg because an Embden contraband trader captured by the English had been driven by stress of weather into the sheltering harbour of Cuxhaven.³

But of little avail with the Powers of the North were arguments merely verbal.

In December, 1800, Denmark, Sweden and Prussia united with Russia in the second armed neutrality.

The guiding principles of the new league were set out in the main in five articles, which added to the four rules of 1780 a fifth dealing with the subject of convoy.⁴

¹Ortolan, *Dipl. de la Mer*, tom. ii, liv. 3, ch. i, pp. 30-31, and *Pièces Justificatives B*.

²See the correspondence between the Spanish and Swedish Governments, Martens, *Supplément*, vol. ii, pp. 374-381.

³*Ibid.* ii, pp. 381-387.

⁴The four Powers agreed upon measures to enforce the rules:—

(1) "Que tout vaisseau peut naviguer librement de port en port, et sur les côtes des nations en guerre.

(2) "Que les effets appartenans aux sujets des dites puissances en guerre soient libres sur les vaisseaux neutres, à l'exception des marchandises de contrebande.

Denmark, taken to task by Great Britain in respect of her accession to a combination for the support of principles diametrically opposed to the spirit of the convention but just concluded, unhesitatingly avowed her adhesion to the Northern Alliance, and called upon her questioner to admit "Que l'abandon provisoire et momentané, non d'un principe dont la question est restée indécise, mais d'une mesure dont le droit n'a jamais été, ni ne scauroit jamais être contesté, ne se trouve nullement en opposition avec les principes généraux et permanens, relativement auxquels les puissances du Nord sont sur le point de rétablir un concert, qui loin de pouvoir compromettre leur neutralité, n'est destiné qu'à la raffermir."¹

But Great Britain, now more free than in 1780 to deal with the self-constituted prophets of neutral right, was in no humor to stomach either the veiled hostility of Bernstorff or the overweening insolence² of Haugwitz. A war of embargoes speedily led on to open rupture. Parker and Nelson forced the passage of the Sound, and crushed the Danish naval power in the bloody battle of Copenhagen;³ the Danish and Swedish possessions in the West Indies surrendered in quick succession to Duckworth and Trigge;⁴ and British troops occupied with-

(3) "Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui, où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer et que tout bâtimens naviguant vers un port bloqué ne pourra être regardé d'avoir contrevenu à la présente Convention, que lorsqu'après avoir été averti par le Commandant du blocus de l'état du port, il tâchera d'y pénétrer en employant la force ou la ruse.

(4) "Que les vaisseaux neutres ne peuvent être arrêtés que sur de justes causes et faits évidents, qu'ils soient jugés sans retard, que la procédure soit toujours uniforme, prompte et légale, et que chaque fois, outre les dédommagemens qu'on accorde à ceux qui ont fait des pertes, sans avoir été en contre-vention, il soit rendu une satisfaction complète pour l'insulte faite au pavillon de leurs Majestés.

(5) "Que la déclaration de l'Officier, commandant le vaisseau ou les vaisseaux de la Marine Royale ou Impériale, qui accompagneront le convoi d'un ou de plusieurs bâtimens marchands, que son convoi n'a à bord aucune marchandise de contrebande, doit suffire pour qu'il n'y ait lieu à aucune visite sur son bord ni à celui des bâtimens de son convoi."

Conventions between Russia and Sweden, Russia and Denmark and Russia and Prussia (Dec., 1800), Martens, *Supplément*, vol. ii, pp. 393, 402, 409.

¹Count Bernstorff to Mr. Drummond, Dec. 31, 1800. Martens, *Supplément*, vol. ii, p. 417.

²Count Haugwitz to Lord Carysfort, Feb. 12, 1801. Martens, *Supplément*, vol. ii, pp. 431 *et seq.*

³April 2, 1801.

⁴Martens, *Supplément*, vol. ii, p. 466.

out a show of resistance Serampore and Tranquebar.¹ Humbled at home and stripped of all their foreign dominions, the Danes were in no condition to prolong an unequal struggle, and the cruel murder of Paul² opened a speedy way to the accommodation of differences. Early in June, 1801, a maritime convention³ was signed at St. Petersburg between the ministers of George III and the new Emperor Alexander. The treaty may be regarded as a compromise. Great Britain, confirming the definition of contraband set out in her last treaty of commerce with Russia, agreed expressly to adopt three principles of the armed neutrality which she had not hitherto contested. She admitted the right of neutrals to navigate freely between the ports and on the coasts of nations at war, she acknowledged that blockade to be binding must be effective, and she assented to the necessity for the administration by belligerents in their dealings with neutrals of speedy and uniform justice. But she vindicated against the neutral Powers the right of search of merchantmen under convoy as exercised by *men-of-war*, and established the liability to seizure by a hostile captor of goods being actually the property of the subject of a belligerent laden under the neutral flag.⁴

WESTLAKE: *International Law, Part II, War.* Second edition, Cambridge, 1913.

John Westlake. Contemporary British publicist; born 1828; Whewell professor of international law at the University of Cambridge, 1888-1908.

Page 263.—The compromise between belligerents and neutrals is, however, subject to the question whether there is anything peculiar in

¹*Memoirs and Correspondence of the Marquis Wellesley*, vol. ii, chap. v.

²*Diaries and Correspondence of the Earl of Malmesbury*, vol. iv, pp. 54-56.

³Martens, *Supplément*, vol. ii, p. 476.

⁴It is agreed by Article III:—

“Que les effets embarqués sur les vaisseaux neutres seront libres, à l’exception de la contrebande de guerre et des propriétés ennemies; et il est convenu de ne pas comprendre au nombre des dernières les marchandises du produit, du crû ou de la manufacture des pays en guerre, qui auroient été acquises par des sujets de la puissance neutre, et seroient transportées pour leur compte; lesquelles marchandises ne peuvent être exceptées en aucun cas de la franchise accordée au pavillon de la dite puissance.” *Rule 2.*

the character of the investment which neutrals have accepted as equivalent to siege, and on this we meet with a long and great controversy which still exists if the Declaration of London shall not be found to have settled it. One point has always been certain, namely, that, whether the blockade be a commercial or a military one, there must be a real danger to the blockade-runner in crossing the line of the investment, independent of any danger which he may run of being caught earlier with the intention of crossing it, or later after having crossed it. A line which it is not in itself highly dangerous to try to pass can not be that of an investment, nor can it affect with technical guilt either the intention to pass it formed at a distance, or the fact of its having been passed. This is expressed as follows by the Declaration of Paris:

4. Blockades, in order to be binding, must be real,¹ that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

If "really to prevent access" were taken literally, the successful crossing the line by one blockade-runner would prove the blockade to be void, which has never been contended. The meaning therefore must be, "to make the attempt at access highly dangerous." But, this being so, a question remains as to the method by which the danger may be created. The continental Powers, including Holland herself after her relative decline in naval power, have usually maintained that a blockade is only valid in law if the danger of ingress or egress arises from the cannon either of ships, stationary or sufficiently near one another, or of works on land. This is laid down, with more or less variety of expression, in the treaty of 1742 between France and Denmark, in that of 1753 between Holland and the Two Sicilies, in the declarations and treaties of armed neutrality in 1780, in the various adhesions of other continental States to that armed neutrality or its rules, and in the declarations and treaties of armed neutrality in 1800.²

¹*Effectifs* in the original, which means "real," not "producing an effect," as effective, which is the official translation, usually means in English. So also whenever an English writer mentions an effective blockade, he must be understood to mean a real one, that is a real investment, and not to be adding any further condition to its reality.

²In several of these pieces the place to be blockaded is described as attacked, but considering the practice of the eighteenth century, it must be admitted that this arose only from habit, or at least was done without an intention to require a real attack. An exception to that interpretation is, however, furnished by the treaty of 1787 between France and Russia, in which the rule of the armed

When Russia, by a change of policy consequent on the battle of Copenhagen and the death of the Emperor Paul, abandoned the armed neutrality of 1800, her treaty of 1801 with England required for a blockade the presence only of ships stationary *or*, instead of *and*, sufficiently near to create an evident danger of entering. Yet in 1823 she assured the United States that she no longer held herself bound by that engagement.¹

WHARTON: *A Digest of the International Law of the United States*. Second edition. Washington, 1887.

Francis Wharton, American publicist; born 1820; died 1891; solicitor for the Department of State of the United States.

Volume III, page 262.—Previous to the war which grew out of the American Revolution, the respective rights of neutrals and belligerents had been settled and clearly defined by the conventional law of Europe, to which all the maritime Powers had given their sanction in the treaties concluded among themselves. The few practical infractions, in time of war, of the principles thus recognized by them, have been disavowed, upon the return of peace, by new stipulations again acknowledging the existence of the rights of neutrals as set down in the maritime code.

In addition to the recognition of these rights by the European Powers, one of the first acts of the United States, as a nation, was their unequivocal sanction of the principles upon which they are founded, as declared in their treaty of commerce of 1778 with the King of France. These principles were that free ships gave freedom to the merchandise, except contraband goods, which were clearly de-

neutrality of 1780 is reproduced with a variation requiring an attack by a number of ships proportioned to the strength of the place, and Napoleon or his advisers, may have had that treaty in their mind when drafting the Berlin decree. But that will not excuse the transparently false assertion about "the usage of all civilized nations." See above, p. 262. Again, many of the treaties, ending with that between Russia and Denmark in 1818, require the line of investment to be formed by a certain number of ships, usually two. That of 1753, mentioned in the text, requires six ships, which may lie a little outside the range of the shore batteries, but which must expose blockade-runners to danger from their cannon.

¹Lawrence's *Wheaton*. edition of 1863, editor's note 235.

fined, and that neutrals might freely sail to and between enemies' ports, except such as were blockaded in the manner therein set forth. These principles having thus been established by universal consent, became the rule by which it was expected that the belligerents would be governed in the war which broke out about that time between France and Spain, on the one hand, and Great Britain, on the other. The latter Power, however, having soon betrayed a disposition to deviate from them in some of the most material points, the Governments which had preserved a neutral course in the contest became alarmed at the danger with which their maritime rights were threatened by the encroachments and naval supremacy of England, and the Empress of Russia, at their head, undertook to unite them in the defense of those rights. On the 28th February, 1780, she issued her celebrated declaration, containing the principles according to which the commanders of her naval armaments would be instructed to protect the neutral rights of her subjects. Those principles were as follows:

1st. Neutral vessels may freely sail from port to port, and on the coasts of the nations parties to the war.

2d. The goods belonging to the subjects of the said nations are, with the exception of contraband articles, free on board neutral vessels.

3d. With respect to the definition of contraband articles, the Empress adheres to the provisions of the 10th and 11th articles of her treaty of commerce with Great Britain, and extends the obligations therein contained to all the nations at war.

4th. To determine what constitutes a blockaded port, this denomination is confined to those the entrance into which is manifestly rendered dangerous in consequence of the dispositions made by the attacking Power with ships stationed and sufficiently near.

5th. These principles are to serve as a rule in proceedings and judgments with respect to the legality of prizes.

This declaration was communicated to the belligerent Governments with a request that the principles it contained should be observed by them in the prosecution of the war. From France and Spain it received the most cordial and unequivocal approbation, as being founded upon the maxims of public law which had been their rule of conduct. Great Britain, without directly approving or condemning those maxims, promised that the rights of Russia would be respected agreeably to existing treaties. The declaration was likewise communicated to the other European Powers, and the accession by treaties or solemn dec-

larations of Denmark, Sweden, Russia, Holland, Austria, Portugal, and the two Sicilies to the principles asserted by the Empress of Russia, formed the league, which, under the name of "armed neutrality," undertook to preserve inviolate the maritime rights of neutrals.

Whatever may have been the conduct of the belligerents in that war with respect to the rights of neutrals as declared by the armed neutrality, the principles asserted by the declaration of the Empress Catharine were again solemnly recognized by the treaty of peace concluded by Great Britain and France at Versailles on the 3d September, 1783. Among the several treaties thereby renewed and confirmed was that of Utrecht, in 1713, by which the same contracting parties had, nearly a century before, given the most solemn sanction to the principles of the armed neutrality, which were thus again proclaimed by the most deliberate acts both of belligerents and neutrals as forming the basis of the universal code of maritime legislation among the naval powers of the world.

Such may be said to have been the established law of nations at the period of the peace of 1783, when the United States, recognized as independent by all the Powers of the earth, took their station amongst them. These principles, to which they had given their sanction in their treaties with France in 1778, were again confirmed in those of 1782 with Sweden, and 1785 with Prussia, and continued, uncontroverted by other nations, until the wars of the French Revolution broke out and became almost general in Europe in 1793. The maxims then advanced by Great Britain in her instructions to her naval commanders and in her orders in council regulating their conduct and that of her privateers with regard to neutrals, being in direct contravention of the principles set forth in the declaration of the armed neutrality and in her own treaty stipulations, compelled the European Powers which had remained neutral in the contest to unite again for the protection of their rights. It was with this view that the Emperor Paul, of Russia, appealed to these Powers, and that, at his instance, making common cause in behalf of the general interests of nations, Russia, Sweden, Denmark, and Prussia united in a new league of armed neutrality, bound themselves by new treaties, reasserted the principles laid down in the declaration of 1780, and added thereto some new clauses extending still further the privileges of neutral commerce.

Mr. Van Buren, Sec. of State, to Mr. Randolph, June 18, 1830.
Mss. Inst., Ministers.

Page 411.—By the “armed neutrality” entered into during the American Revolutionary War by Russia, Denmark, and Sweden in 1780, “being the three northern Powers from whose dominions chiefly the other maritime nations of Europe received supplies of timber and other naval stores,” the effort was made “to strike these from the list of contraband, or by some means to exempt them from capture.” It was understood, however, at the time, that this was an exception from the law of nations. By this law “timber and other articles for the equipment of ships are contraband of war.” Hence the recital of this principle in Jay’s treaty ought to give no just cause of offense to France.

Mr. Pickering, Sec. of State, to Mr. Pinckney, Jan. 16, 1797.
Mss. Inst., Ministers.

WOOLSEY: *Introduction to the Study of International Law, designed as an aid in teaching and in historical studies* by Theodore Dwight Woolsey. Sixth edition revised and enlarged by Theodore Salisbury Woolsey. New York, 1897.

Theodore Dwight Woolsey. American publicist and educationalist; born in 1801; died in 1889; president of Yale College from 1846 to 1871; member of the Institute of International Law; author of works on Greek literature, law, religion, and social economy. He contributed largely to periodicals and wrote numerous articles on subjects bearing on international law, among others, *Recent Aspects of International Law*, 1856, and *Right of Search*, 1858, both of which appeared in the *New Englander*, a review founded by him. His most important contribution to the science of international law is his *Introduction to the study of international law, designed as an aid in teaching and in historical studies*, 1860, which has run through many editions.

Page 270.—The position of the neutral gives rise to rights, which may be defended against attempted aggressions of a belligerent by armed forces, and several neutrals may unite for this purpose. This is called an armed neutrality, of which the two leagues of the Baltic

Powers in 1780 and 1800 furnish the most noted instances. But it may be doubted whether the term neutrality can be applied to these leagues, which not only armed themselves for self-defense, but laid down principles of public law against the known maxims of one of the belligerents, which they were ready to make good by force. (Secs. 189, 209.)

Page 310.—The armed neutrality set on foot in 1780 was a plan to escape from the severe but ancient way of dealing with neutrals which Great Britain enforced, by advancing certain milder principles of international law. These were that neutral vessels had a right to sail in freedom from harbor to harbor and along the coasts of belligerents; that the property of enemies not contraband of war on neutral ships should be free; that a port is blockaded only when evident danger attends on the attempt to run into it; that by these principles the detention and condemnation of neutral ships should be determined; and that, when such vessels had been unjustly used, besides reparation for loss, satisfaction should be made to the neutral sovereign. The parties to this league engaged to equip a fleet to maintain their principle, and were to act in concert. These parties were, besides Russia, which announced the system to the Powers at war, and invited other neutrals to cooperation, Denmark, Sweden, the Dutch provinces, Prussia, Austria, Portugal, and Naples. Two of the belligerents, France and Spain, concurred, but the other, England, replied that she stood by the law of nations and her treaties. England had reason to complain of this league, because some of the parties, then at peace with her,—Sweden and Denmark,—were at the time held by treaty with her to just the contrary principle; while others had even punished neutral ships for what they now claimed to be a neutral right. The first armed neutrality did little more than announce a principle, for no collision took place between them and Great Britain; but it formed an epoch, because in no previous arrangement between Christian states had the rule, “free ships, free goods,” been separated from the opposite, “unfree or hostile ships, hostile goods.” In the peace of Versailles, which in 1783 terminated the war between England and France growing out of our revolution, the two Powers returned to the stipulations of the peace of Utrecht which have been mentioned above.

Page 312.—Twenty years after the first armed neutrality a second was formed, to which Russia, the Scandinavian Powers, and Prussia were parties; and which derived the pretext for its formation from differences of opinion concerning convoy (Sec. 209), as well as from alleged violations of neutral rights by English cruisers in the case of a Swedish vessel. The platform of this alliance embraced much the same principles as that of 1780, together with new claims concerning convoy. But nothing was gained by it saving some trifling concessions from Great Britain, while Russia, Denmark and Sweden ere long gave in their adherence to the English views of neutral liabilities. (Sec. 209 and Append. ii., under 1800.)

Page 361.—A search at sea is exceedingly annoying, not only because it may affect an innocent party, and may cause expensive delays, but also because those who are concerned in it are often insolent and violent. What can be expected of a master of a privateer, or of an inferior officer in the navy, urged perhaps by strong suspicion of the neutral's guilt, but that he will do his office in the most offensive and irritating manner? To prevent these annoyances, governments have sometimes arranged with one another, that the presence of a public vessel, or convoy, among a fleet of merchantmen, shall be evidence that the latter are engaged in a lawful trade. But neutrals have gone farther than this, they have claimed, without previous treaty, that a national ship convoying their trading vessels shall be a sufficient guaranty that no unlawful traffic is on foot. The beginnings of such a claim proceeded from the Dutch in the middle of the seventeenth century, but the first earnest and concerted movement on the part of neutrals for this end, was made near the end of the last century, at which time, also, the principal maritime powers, excepting Great Britain, made treaties establishing the right of convoy between themselves. From this starting point, neutrals went on to claim that this ought to be regarded as a right forming a part of the law of nations, and to employ force, when Great Britain exercised, without respect to the convoy, the right of search on the old plan. In 1798, the convoy of a fleet of Swedish merchantmen, having, in conformity with instructions, taken a British officer out of one of the vessels of commerce, the whole fleet was captured, and Sir William Scott, in the British admiralty court, decided that the act of violence subjected all

the vessels to condemnation.¹ Not long after this, in 1800, a Danish frigate in the Mediterranean, acting as a convoy, fired on the boats sent from British frigates to examine the merchant vessels under its protection. The act was repeated in July of the same year by another frigate of the same nation, then neutral but ill-affected towards England. The frigate, named the *Freya*, with six trading vessels under its care, met six British ships of war, when the refusal of a demand to search the merchantmen led to acts of hostility, which resulted in the surrender of the Danish national vessel. In consequence, however, of negotiations between the two governments, the ship was released, and it was agreed, on the part of the Danes, that the right of convoy should not be exercised, until some arrangement should be made touching this point.

These collisions were one of the reasons for the formation of the *second armed neutrality* of 1800. In that league the contracting Powers (Russia, Sweden, Denmark, and Prussia), among other stipulations, agreed that search should be prevented by a declaration of officers in charge of a convoy to the effect that the ships under his charge had no contraband goods on board.

The armed neutrality was succeeded by retaliatory embargoes, and on the 2d of April, 1801, the battle of Copenhagen prostrated the power of Denmark. Conventions were soon afterwards effected between Great Britain and the northern powers—*i. e.*, Russia, Sweden, and Denmark, without Prussia—by which it was agreed that goods on neutral vessels, except contraband of war and enemy's property, should be free, and in which the following arrangements regarding convoy received the assent of the parties: (1) That the right of visit, exercised by belligerents on vessels of the parties to the armed neutrality, shall be confined to public vessels of war, and never committed to privateers. (2) That trading vessels of any of the contractants, under convoy, shall lodge with the commander of the convoying vessel their passports and certificates or sea-letters, drawn up according to a certain form. (3) That when such vessel of convoy and a belligerent vessel meet, they shall ordinarily be beyond the distance of cannon-shot from one another, and that the belligerent commander shall send a boat to the neutral vessel, whereupon proofs shall be exhibited both that the vessel of convoy has a right to act in that capacity, and that

¹Case of the *Maria*, 1 Robinson's Rep. 340-379.

the visiting vessel in truth belongs to the public navy. (4) This done, there shall be no visit, if the papers are according to rule. Otherwise, the neutral commander, on request of the other, shall detain the merchantmen for visits, which shall be made in the presence of officers selected from the two ships of war. (5) If the commander of the belligerent vessels finds that there is reason in any case for further search, on notice being given of this, the other commander shall order an officer to remain on board the vessel so detained, and assist in examining into the cause of the detention. Such vessel is to be taken to the nearest convenient port belonging to the belligerent, where the ulterior search shall be conducted with all possible despatch.¹

¹See Woolsey, *Introduction to the Study of International Law*, 6th ed., Append. ii, under 1800.

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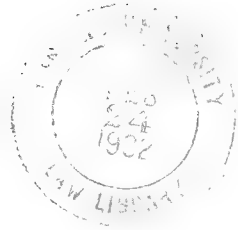
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Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

Pamphlet No. 29

28



TWO IDEALS OF GOVERNMENT

PUBLISHED BY THE ENDOWMENT
WASHINGTON, D. C.

1917

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Prefatory Note

Two ideals of government face one another to-day in mortal combat: the one the ideal of the past, the other the ideal of the future. The old is strongly entrenched in Europe, the new is strongly entrenched in America. The triumph must be of one or of the other; both can no longer exist together.

The new ideal is not merely a hope and an aspiration; it is already a fact and a practice. It has been expressed on two occasions by Abraham Lincoln, on the battlefield of Gettysburg and on assuming the presidency of the United States for the second time. It has again found a full and a noble application in the address of President Wilson to the Congress, pledging anew the American people to the American ideal, "that government of the people, by the people, and for the people, shall not perish from the earth."

JAMES BROWN SCOTT,

Director of the Division of International Law.

WASHINGTON, D. C.,

April 6, 1917.

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TWO IDEALS OF GOVERNMENT. The Declaration of Independence—1776

In Congress, July 4, 1776.

The unanimous Declaration of the thirteen united States of America.

WHEN in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Depotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accomodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies, without the Consent of our legislature.

He has affected to render the military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any

Murders which they should commit on the Inhabitants of these States :

For cutting off our Trade with all parts of the world :

For imposing taxes on us without our Consent :

For depriving us in many cases, of the benefits of Trial by Jury :

For transporting us beyond Seas to be tried for pretended offences :

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies :

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments :

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these

usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire

JOSIAH BARTLETT
WM. WHIPPLE

MATTHEW THORNTON

Massachusetts Bay

SAML. ADAMS
JOHN ADAMS

ROBT. TREAT PAINE
ELDRIDGE GERRY

Rhode Island

STEP. HOPKINS

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Connecticut

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New Jersey

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JOHN HART
ABRA. CLARK

Pennsylvania

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Delaware

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JOHN PENN

South Carolina

EDWARD RUTLEDGE
 THOS. HEYWARD, Junr.

THOMAS LYNCH, Junr.
 ARTHUR MIDDLETON

Georgia

BUTTON GWINNETT
 LYMAN HALL

GEO. WALTON

President Lincoln's Gettysburg Address, November 19, 1863

Fourscore and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this. But in a larger sense we can not dedicate, we can not consecrate, we can not hallow this ground. The brave men, living and dead, who struggled here, have consecrated it far above our power to add or detract. The world will little note, nor long remember, what we say here, but it can never forget what they did here. It is for us, the living, rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us, that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, and for the people, shall not perish from the earth.

President Lincoln's Second Inaugural Address, March 4, 1865

FELLOW COUNTRYMEN: At this second appearing to take the oath of the Presidential office there is less occasion for an extended address than there was at the first. Then a statement somewhat in detail of a course to be pursued seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself, and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it, all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to *saving* the Union without war, insurgent agents were in the city seeking to *destroy* it without war—seeking to dissolve the Union and divide effects by negotiation. Both parties deprecated war, but one of them would *make* war rather than let the nation survive, and the other would *accept* war rather than let it perish, and the war came.

One-eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union even by war, while the Government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the *cause* of the conflict might cease with or even before the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible and pray to the same God, and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in

wringing their bread from the sweat of other men's faces, but let us judge not, that we be not judged. The prayers of both could not be answered. That of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses; for it must needs be that offenses come, but woe to that man by whom the offense cometh." If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

**Address of President Wilson to the Joint Session of Congress, April
2, 1917, respecting the Relations of the United States
with Germany**

GENTLEMEN OF THE CONGRESS:

I have called the Congress into extraordinary session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making.

On the third of February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after the first day of February it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coasts of Europe or any of the ports controlled by the enemies of Germany within the Mediterranean. That had seemed to be the object of the German submarine warfare earlier in the war, but since April of last year the Imperial Government had somewhat restrained the commanders of its undersea craft in conformity with its promise then given to us that passenger boats should not be sunk and that due warning would be given to all other vessels which its submarines might seek to destroy, when no resistance was offered or escape attempted, and care taken that their crews were given at least a fair chance to save their lives in their open boats. The precautions taken were meagre and haphazard enough, as was proved in distressing instance after instance in the progress of the cruel and unmanly business, but a certain degree of restraint was observed. The new policy has swept every restriction aside. Vessels of every kind, whatever their flag, their character, their cargo, their destination, their errand, have been ruthlessly sent to the bottom without warning and without thought of help or mercy for those on board, the vessels of friendly neutrals along with those of belligerents. Even hospital ships and ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with safe conduct through the proscribed areas by the German Government itself and were distinguished by unmistakable marks of identity, have been sunk with the same reckless lack of compassion or of principle.

I was for a little while unable to believe that such things would in fact be done by any government that had hitherto subscribed to the humane practices of civilized nations. International law had its origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world. By painful stage after stage has that law been built up, with meagre enough results, indeed, after all was accomplished that could be accomplished, but always with a clear view, at least, of what the heart and conscience of mankind demanded. This minimum of right the German Government has swept aside under the plea of retaliation and necessity and because it had no weapons which it could use at sea except these which it is impossible to employ as it is employing them without throwing to the winds all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the world. I am not now thinking of the loss of property involved, immense and serious as that is, but only of the wanton and wholesale destruction of the lives of non-combatants, men, women, and children, engaged in pursuits which have always, even in the darkest periods of modern history, been deemed innocent and legitimate. Property can be paid for; the lives of peaceful and innocent people can not be. The present German submarine warfare against commerce is a warfare against mankind.

It is a war against all nations. American ships have been sunk, American lives taken, in ways which it has stirred us very deeply to learn of, but the ships and people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been no discrimination. The challenge is to all mankind. Each nation must decide for itself how it will meet it. The choice we make for ourselves must be made with a moderation of counsel and a temperateness of judgment befitting our character and our motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right, of human right, of which we are only a single champion.

When I addressed the Congress on the twenty-sixth of February last I thought that it would suffice to assert our neutral rights with arms, our right to use the seas against unlawful interference, our right to keep our people safe against unlawful violence. But armed neutrality, it now appears, is impracticable. Because submarines are in effect out-

laws when used as the German submarines have been used against merchant shipping, it is impossible to defend ships against their attacks as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, visible craft giving chase upon the open sea. It is common prudence in such circumstances, grim necessity indeed, to endeavor to destroy them before they have shown their own intention. They must be dealt with upon sight, if dealt with at all. The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend. The intimation is conveyed that the armed guards which we have placed on our merchant ships will be treated as beyond the pale of law and subject to be dealt with as pirates would be. Armed neutrality is ineffectual enough at best; in such circumstances and in the face of such pretensions it is worse than ineffectual: it is likely only to produce what it was meant to prevent; it is practically certain to draw us into the war without either the rights or the effectiveness of belligerents. There is one choice we can not make, we are incapable of making: we will not choose the path of submission and suffer the most sacred rights of our nation and our people to be ignored or violated. The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it; and that it take immediate steps not only to put the country in a more thorough state of defense but also to exert all its power and employ all its resources to bring the Government of the German Empire to terms and end the war.

What this will involve is clear. It will involve the utmost practicable cooperation in counsel and action with the governments now at war with Germany, and, as incident to that, the extension to those governments of the most liberal financial credits, in order that our resources may so far as possible be added to theirs. It will involve the organization and mobilization of all the material resources of the country to

supply the materials of war and serve the incidental needs of the nation in the most abundant and yet the most economical and efficient way possible. It will involve the immediate full equipment of the navy in all respects but particularly in supplying it with the best means of dealing with the enemy's submarines. It will involve the immediate addition to the armed forces of the United States already provided for by law in case of war at least five hundred thousand men, who should, in my opinion, be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training. It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as they can equitably be sustained by the present generation, by well conceived taxation.

I say sustained so far as may be equitable by taxation because it seems to me that it would be most unwise to base the credits which will now be necessary entirely on money borrowed. It is our duty, I most respectfully urge, to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

In carrying out the measures by which these things are to be accomplished we should keep constantly in mind the wisdom of interfering as little as possible in our own preparation and in the equipment of our own military forces with the duty,—for it will be a very practical duty,—of supplying the nations already at war with Germany with the materials which they can obtain only from us or by our assistance. They are in the field and we should help them in every way to be effective there.

I shall take the liberty of suggesting, through the several executive departments of the Government, for the consideration of your committees, measures for the accomplishment of the several objects I have mentioned. I hope that it will be your pleasure to deal with them as having been framed after very careful thought by the branch of the Government upon which the responsibility of conducting the war and safeguarding the nation will most directly fall.

While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are. My own thought has not been driven from its habitual and normal course by the unhappy events of the last two months, and

I do not believe that the thought of the nation has been altered or clouded by them. I have exactly the same things in mind now that I had in mind when I addressed the Senate on the twenty-second of January last; the same that I had in mind when I addressed the Congress on the third of February and on the twenty-sixth of February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth ensure the observance of those principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic governments backed by organized force which is controlled wholly by their will, not by the will of their people. We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.

We have no quarrel with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval. It was a war determined upon as wars used to be determined upon in the old, unhappy days when peoples were nowhere consulted by their rulers and wars were provoked and waged in the interest of dynasties or of little groups of ambitious men who were accustomed to use their fellow men as pawns and tools. Self-governed nations do not fill their neighbor states with spies or set the course of intrigue to bring about some critical posture of affairs which will give them an opportunity to strike and make conquest. Such designs can be successfully worked out only under cover and where no one has the right to ask questions. Cunningly contrived plans of deception or aggression, carried, it may be, from generation to generation, can be worked out and kept from the light only within the privacy of courts or behind the carefully guarded confidences of a narrow and privileged class. They are happily impossible where public opinion commands and insists upon full information concerning all the nation's affairs.

A steadfast concert for peace can never be maintained except by a partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its covenants. It must be a league of honor, a partnership of opinion. Intrigue would eat its vitals away; the plottings of inner circles who could plan what they would and render account to no one would be a corruption seated at its very heart. Only free peoples can hold their purpose and their honor steady to a common end and prefer the interests of mankind to any narrow interest of their own.

Does not every American feel that assurance has been added to our hope for the future peace of the world by the wonderful and heartening things that have been happening within the last few weeks in Russia? Russia was known by those who knew it best to have been always in fact democratic at heart, in all the vital habits of her thought, in all the intimate relationships of her people that spoke their natural instinct, their habitual attitude towards life. The autocracy that crowned the summit of her political structure, long as it had stood and terrible as was the reality of its power, was not in fact Russian in origin, character, or purpose; and now it has been shaken off and the great, generous Russian people have been added in all their naive majesty and might to the forces that are fighting for freedom in the world, for justice, and for peace. Here is a fit partner for a League of Honor.

One of the things that has served to convince us that the Prussian autocracy was not and could never be our friend is that from the very outset of the present war it has filled our unsuspecting communities and even our offices of government with spies and set criminal intrigues everywhere afoot against our national unity of counsel, our peace within and without, our industries and our commerce. Indeed it is now evident that its spies were here even before the war began; and it is unhappily not a matter of conjecture but a fact proved in our courts of justice that the intrigues which have more than once come perilously near to disturbing the peace and dislocating the industries of the country have been carried on at the instigation, with the support, and even under the personal direction of official agents of the Imperial Government accredited to the Government of the United States. Even in checking these things and trying to extirpate them we have sought to put the most generous interpretation possible upon them because we knew that their source lay, not in any hostile feeling or purpose of the German people towards us (who were, no doubt as ignorant of them

as we ourselves were), but only in the selfish designs of a Government that did what it pleased and told its people nothing. But they have played their part in serving to convince us at last that that Government entertains no real friendship for us and means to act against our peace and security at its convenience. That it means to stir up enemies against us at our very doors the intercepted note to the German Minister at Mexico City is eloquent evidence.

We are accepting this challenge of hostile purpose because we know that in such a government, following such methods, we can never have a friend; and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic governments of the world. We are now about to accept gauge of battle with this natural foe to liberty and shall, if necessary, spend the whole force of the nation to check and nullify its pretensions and its power. We are glad, now that we see the facts with no veil of false pretence about them, to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty. We have no selfish ends to serve. We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make. We are but one of the champions of the rights of mankind. We shall be satisfied when those rights have been made as secure as the faith and the freedom of nations can make them.

Just because we fight without rancor and without selfish object, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion and ourselves observe with proud punctilio the principles of right and of fair play we profess to be fighting for.

I have said nothing of the governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our honor. The Austro-Hungarian Government has, indeed, avowed its unqualified endorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government, and it has therefore not been possible for this Government to receive Count Tarnowski, the Ambassador recently accredited to this Government by the Im-

perial and Royal Government of Austria-Hungary; but that Government has not actually engaged in warfare against citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other means of defending our rights.

It will be all the easier for us to conduct ourselves as belligerents in a high spirit of right and fairness because we act without animus, not in enmity towards a people or with the desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible government which has thrown aside all considerations of humanity and of right and is running amuck. We are, let me say again, the sincere friends of the German people, and shall desire nothing so much as the early reestablishment of intimate relations of mutual advantage between us,—however hard it may be for them, for the time being, to believe that this is spoken from our hearts. We have borne with their present government through all these bitter months because of that friendship,—exercising a patience and forbearance which would otherwise have been impossible. We shall, happily, still have an opportunity to prove that friendship in our daily attitude and actions towards the millions of men and women of German birth and native sympathy who live amongst us and share our life, and we shall be proud to prove it towards all who are in fact loyal to their neighbors and to the Government in the hour of test. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us in rebuking and restraining the few who may be of a different mind and purpose. If there should be disloyalty, it will be dealt with with a firm hand of stern repression; but, if it lifts its head at all, it will lift it only here and there and without countenance except from a lawless and malignant few.

It is a distressing and oppressive duty, Gentlemen of the Congress, which I have performed in thus addressing you. There are, it may be, many months of fiery trial and sacrifice ahead of us. It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to be in the balance. But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts,—for democracy, for the right of those who submit to authority to have a

voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free. To such a task we can dedicate our lives and our fortunes, everything that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other.



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OPENING ADDRESS BY ELIHU ROOT AS PRESIDENT
OF THE AMERICAN SOCIETY OF INTERNATIONAL
LAW AT THE ELEVENTH ANNUAL MEETING OF THE
SOCIETY IN WASHINGTON, APRIL 26, 1917

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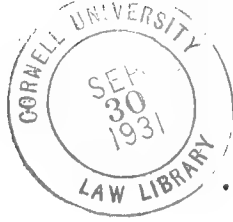
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THE EFFECT OF DEMOCRACY ON INTERNATIONAL LAW

In trying to estimate the future possibilities of International Law, and to form any useful opinion as to the methods by which the law can be made more binding upon international conduct, serious difficulties are presented in the unknown quantities introduced by the great War, which is steadily drawing into its circle the entire civilized world. Hitherto, we have been unable to form any real judgment as to which of the two warring groups of nations will succeed in the end. Our expectations and beliefs upon that question have been the products of our sympathies and our hopes and of an optimism for which it is now happily more easy to find just grounds than ever before. Nor have we been able to measure the effects of the War upon national character, and the probable results in national modes of thought and conduct.

A just estimate of such forces is not easy. The modern era of nationalities has been marked by three great convulsions which turned the minds of all civilized men towards peace, and led them to seek means to make peace secure.

The Thirty Years' War produced the Peace of Westphalia and the system of independent nationalities in Europe, and it produced Grotius and the science of International Law; and practically every power in Europe except the Ottoman was a party to the agreement to maintain the system thus established. Yet, the century which followed exhibited the most cynical and universal disregard for the law, and for the Treaty, and for all treaties.

The Napoleonic wars produced the Treaty of Vienna and the Holy Alliance. That sincere but misguided effort sought to fix the limits and regulate the conduct of the nations of Europe in accordance with the principles which the treaty-making powers then believed to be in keeping with right and justice, and to be effective for the permanent peaceful organization of the community of nations, and it sought to maintain the *status quo* by the establishment of a League to Enforce Peace in accordance with their conception. Yet, the arrangements

were conceived by minds imbued with the spirit of the past and became of no effect when tested by the changes wrought by the spirit of the future. The old bottles were filled with new wine and could not contain it; so, the scheme came to naught.

Both of these efforts to secure permanent peace under the rule of law failed because the unappreciated forces working for change and growth became stronger than the gradually decreasing restraint of agreements to maintain a fixed and immutable relation of territory and opportunities among the nations. It is reasonable to infer that a similar result must follow any attempt to base a system of international law upon definite and rigid limitations devised to meet the expediency of the moment. The law of life is growth, and no generation can prevent the growth of future generations by fixing in accordance with its ideas the specific conditions under which they are to live. As we look back, we see a multitude of ancient wrongs protected by the law of nations, naturally enough, because the law has been made by powers in possession. We have a vague impression that international wrongs are cured by time. That is not always so. There is no international statute of limitations. Time alone cures no wrong. The people to whom wrong is done may be destroyed, as the Turks are destroying the Armenians; or the wronged people may be reconciled to the new conditions like the Saxons in England; but, for example, the unforgiven wrong of the Turk in Europe, and the unforgiven wrong of the partition of Poland, are always forces working against the law that protects them. The maintenance or the redress of such wrongs is merely a question of relative power. The rise in power of Christian Europe, and the decadence of the Ottoman Empire, make inevitable the complete reflux of the tide which once reached the walls of Vienna, and even to the valley of the Loire. No human laws or conventions could bind the forces which work through centuries to achieve such results. The futility of efforts to control such movements of mankind by the short-sighted policies of the passing day can not be better illustrated than by the misplaced energy and sacrifice of the Crimean War and the fatuous ingenuity of the Congress of Berlin which sought to bolster up and preserve the sovereignty of the Turk.

As we consider how it may be possible to reestablish the law of nations upon a durable basis, we must realize that past experience indicates that no system of law which depends upon the physical partition of the earth dictated by the expediency of the time, no law

which must be broken in order that living wrongs shall be redressed, or in order that the new ideas of the future may find room for growth, can be permanent.

We should therefore inquire whether the political and social conditions to which we may reasonably look forward after the war, the forces that are to move mankind, the trend of development, will be such as to enable us in our day to escape the errors of our predecessors, and to establish upon some basis of principle a system of international law which can be maintained and enforced.

The greatest change in the conditions of national life during the past century has been in the advance and spread of democratic government, and the correlative decrease in the extent and power of autocratic and dynastic governments. It is impossible to regard the advance of democracy as being merely local or temporary. It has been the result of long-continued and persistent progress varying in different countries according to the character of the people, and the nature of the obstacles to be overcome, but, in its nature, essentially the same in all countries.

England in her steady-going undemonstrative way has moved along from government by a king claiming divine right to a Commons representing popular right through the revolution of 1688, which established the nation's right to choose its king, through that civil war over the rights of British subjects known as the American Revolution, through chartism and Catholic emancipation, the Reform Bill of 1832, the franchise extension of 1867, the abandonment of the king's veto power, and the establishment of the Commons' right to pass bills over the rejection of the House of Lords.

France in her own different way with much action and reaction traveled towards the same goal through the States General and the Constituent Assembly, through the Reign of Terror, and her amazing defense of the first Republic against all Europe, through the heroic surgery of Napoleon's career, the Bourbon restoration, the assertion of her right to choose her own king in 1830, and the assertion of her right to dispense with a king in 1848, the plebiscite and the second Empire, the Commune and the third Republic, which has grown in stability and capacity for popular government until the steadiness and self-control and noble devotion of the French people under suffering and sacrifice have come to be one of the amazing revelations of these terrible years.

Italy struggling out of the control of a multitude of petty tyrants, sustained by foreign influence established her newly-won unity and independence upon the basis of representative parliamentary government.

Spain has regained and strengthened the constitution of which Ferdinand VII and the Holy Alliance deprived her.

Throughout the greater part of the world constitutions have become the order of the day. Switzerland, Belgium, Holland, Portugal, all Scandinavia, all Latin-America, have established their governments upon constitutional bases. Japan, emerging from her military feudalism, makes her entry into the community of civilized nations under a constitutional government. China, throwing off the domination of the Manchu, is striving to accustom her long-suffering and submissive millions to the idea of constitutional right. The great self-governing British Dominions bound to the Mother Country only by ties of tradition and sentiment have shown that free Democracies can respond to moral forces with a splendid power of loyalty that no coercion could inspire. And, now, Russia, extirpating the government which has been for modern times the typical illustration of autocracy, is engaged in establishing the new self-control of that vast Empire upon the basis of universal suffrage and republican institutions.

The political conception of control from above by monarchs exercising divine right is not merely disputed by philosophers and reformers; it has faded and grown dim in the minds of the millions of men in the civilized nations, and in its place has spread throughout the world the political conception of constitutional government exercising control by authority of the peoples who are governed.

The persistence and extent of this change in the political and social conditions of national life forbid the idea that it is the child of individual minds or local provocations or temporary causes, and distinguish it as one of those great and fundamental movements of the human mind which no power can control, and which run their course inevitably to the end in an unknown future. The existence and assured continuance of this process of development of democracy is the great fact forecasting the future conditions under which the effort to reinstate the law of nations is to be made.

What is to be the effect of this change in conditions upon the possibility of making international law relatively permanent? In considering this question, some facts can be clearly perceived.

The substitution of a democratic for an autocratic régime removes the chief force which in the past has led nations to break over and destroy the limitations of law; that is, the prosecution of dynastic policies. Such policies in general have in view the increase of territory, of dominion, of power, for the ruler and the military class or aristocracy which surrounds the ruler and supports his throne. The benefit of the people who are ruled is only incidentally—if at all—involved. If we turn back to the causes which destroyed the peace of the world under the dispositions made by the Treaty of Westphalia, the mind naturally rests on the War of the Spanish Succession which drenched Europe in blood through the first decade of the eighteenth century, and ended in the Treaty of Utrecht only when Louis XIV was reduced to exhaustion. What was that about? Nothing more or less than the question what royal house should have its power increased by a marriage that would ultimately enable it to control the territory and wield the power of Spain for its own aggrandizement. The interests of the people of Spain or the people of France or of any other country furnished no part of the motive power. What caused the War of the Austrian Succession a generation later, when Frederick (called "The Great") marched his army into Silesia to wrest that province from the feeble hands of young Maria Theresa in flagrant violation of his solemn promise to protect her title under the covenants of the pragmatic sanction, and when the nations of Europe gathered like buzzards about one dying, eager to share in the dismemberment of the possessions of the House of Austria? It was the desire of royal princes to increase their power and glory regardless of law and justice, and the welfare of peoples, and, incidentally, a desire by some states to prevent that increase, lest the same rule of spoliation might more readily be applied to them.

Underlying the whole age-long struggle to maintain the balance of power in Europe has been the assumption that increased power would be used for aggression and to secure further increase of power by the conquest of territory and the subjection of its inhabitants; and the common experience of mankind under the autocratic system of government by divine right has justified the assumption. It was a perfect understanding of this characteristic of autocratic government that inspired the words of President Monroe's famous declaration: "We should consider any attempt on their part (the European powers) to extend their system to any portion of this hemisphere as dangerous to our peace and safety."

Against the deep and settled purpose of a ruling family or a ruling aristocratic class to enlarge its power, continuing from generation to generation, usually concealed until the favorable moment for action comes, always justified or excused by specious pretexts, the advocates of peace, or justice, or humanity, or law, are helpless. All other causes of war can be reached. International misunderstandings can be explained away. Dislikes and suspicions can be dissipated by intercourse, and better knowledge, and courtesy, and kindness. Considerate justice can prevent real causes of war. Rules of action to prevent controversy may be agreed upon by diplomacy and conferences and congresses. Honest differences as to national rights and duties may be settled by arbitration, or judicial decision; but, against a deep and persistent purpose by the rulers of a great nation to take away the territory of others, or to reduce others to subjection for their own aggrandizement, all these expedients are of no avail. The Congresses of Westphalia, of Vienna, of Berlin, and a multitude of others less conspicuous, have sought to curb the evil through setting limits upon power by treaty. They have all failed. The Peace Conferences at The Hague have sought to diminish the evil by universal agreement upon rules of action. The rules and the treaties have become "scraps of paper."

The progress of democracy, however, is dealing with the problem by destroying the type of government which has shown itself incapable of maintaining respect for law and justice and resisting the temptations of ambition, and by substituting a new form of government, which in its nature is incapable of proceeding by the same methods, and necessarily responds to different motives and pursues different objects from the old autocratic offenders. Only when that task has been substantially accomplished will the advocates of law among nations be free from the inheritance of former failure. There will then be a new field open for a new trial, doubtless full of difficulties of its own, but of fair hope and possibilities of success.

Self-governing democracies are indeed liable to commit great wrongs. The peoples who govern themselves frequently misunderstand their international rights, and ignore their international duties. They are often swayed by prejudice, and blinded by passion. They are swift to decide in their own favor the most difficult questions upon which they are totally ignorant. They are apt to applaud the jingo politician who courts popularity by public insult to a friendly people, and to condemn the statesman who modifies extreme demands through

the concessions required by just consideration for the rights of others. All these faults, however, are open and known to the whole world. The opinions and motives from which they proceed, the real causes of error, can be reached by reason, by appeal to better instincts, by public discussion, by the ascertainment and dissemination of the true facts.

There are some necessary features of democratic self-government which tend towards the progressive reduction of tendencies to international wrong-doing. One is that democracies are absolutely dependent for their existence upon the preservation of law. Autocracies can give commands and enforce them. Rules of action are a convenience, not a necessity for them. On the other hand, the only atmosphere in which a democracy can live between the danger of autocracy on one side and the danger of anarchy on the other is the atmosphere of law. Respect for law is the essential condition of its existence; and, as in a democracy the law is an expression of the people's own will, self-respect, and personal pride, and patriotism demand its observance. An essential distinction between democracy and autocracy is that while the government of an autocracy is superior to the law, the government of a democracy is subject to the law. The conception of an international law binding upon the governments of the world is therefore natural to the people of a democracy, and, any violation of that law which they themselves have joined in prescribing is received with disapproval, if not with resentment. This is well illustrated by the attitude of the people of the separate States of the American Union towards the decisions of the Supreme Court of the United States passing upon the exercise of power by State Governments. Physical force has never been used to compel conformity to those decisions. Yet, the democratic people of the United States have answered Jackson's contemptuous remark, "John Marshall has made his decision; now let him enforce it." The answer is that it is the will of self-governed democracy to obey the law, which it has itself established, and the decisions of the Great Tribunal which declares the law controlling State action will be accepted and observed by common consent and enforced by the power of public opinion.

Another necessary feature of democratic government is that the exercise of the power of popular self-government is a continual training of all citizens in the very qualities which are necessary for the maintenance of law between nations. Democratic government can not be carried on except by a people who acquire the habit of seeking

true information about facts, of discussing questions of right and wrong, of interest, and of possible consequences, who have kindly consideration for opposing opinions, and a tolerant attitude towards those who differ. The longer a democracy preserves itself through the exercise of these qualities, the better adapted it is to apply the same methods in the conduct of its international business, and the result is a continually increasing certainty that international law will be observed in a community of democratic nations.

The most important difference, however, between the two forms of government is that democracies are incapable of holding or executing those sinister policies of ambition which are beyond the reach of argument and the control of law. A democracy can not hold such policies, because the open and public avowal and discussion which must precede their adoption by a democracy is destructive of them; and it can not execute such policies because it uniformly lacks the kind of disciplined efficiency necessary to diplomatic and military affirmatives. The settled and continuous policies of a democracy are defensive. Nearly ninety years ago De Tocqueville in his survey of "Democracy in America" recorded what he deemed to be a weakness of our system of government in foreign affairs. He said:

Foreign politics demand scarcely any of those qualities which a democracy possesses, and they require on the contrary the perfect use of almost all those faculties in which it is deficient. Democracy is favorable to the increase of the internal resources of the State; it tends to diffuse a moderate independence; it promotes the growth of public spirit, and fortifies the respect which is entertained for law in all classes of society; and these are advantages which only exercise an indirect influence over the relations which one people bears to another. But a democracy is unable to regulate the details of an important undertaking, to persevere in a design, and to work out its execution in the presence of serious obstacles. It can not combine its measures with secrecy, and it will not await their consequences with patience. These are qualities which more especially belong to an individual or to an aristocracy, and they are precisely the means by which an individual people attains to a predominant position.

So long as foreign affairs were to continue as they were carried on in his day, De Tocqueville was doubtless right. It is because democracies are not fitted to conduct foreign affairs as they were conducted in De Tocqueville's day that the prevalence of democracy throughout

the world makes inevitable a change in the conduct of foreign affairs. Such affairs when conducted by democratic governments must necessarily be marked by the absence of those undertakings and designs, and those measures combined with secrecy, prosecuted with perseverance for which he declares democracies to be unfit.

This characteristic of popular governments is well illustrated by the hundred years of peace which we are all rather proud of preserving throughout the 3,000 miles of boundary between Canada and the United States without fortifications or ships of war or armies. There have been many occasions when the tempers of the men on either side of the line were sorely tried. The disputes regarding the Northeastern Boundary, the Oregon Boundary, the Alaska Boundary, were acute; the affair of the Caroline on the Niagara River, the Fenian Raid upon Lake Champlain, the enforcement of the Fisheries regulations, were exasperating and serious, but upon neither side of the boundary did democracy harbor those sinister designs of aggrandizement and ambition which have characterized the autocratic governments of the world. On neither side was there suspicion of any such designs in the democracy across the border. The purpose of each nation was merely to stand up for its own rights, and so reason has always controlled, and every question has been settled by fair agreement, or by arbitral decision; and, finally, for the past eight years a permanent International Commission with judicial powers has disposed of the controversies arising between the citizens of the two countries along the border as unobtrusively and naturally as if the questions arose between citizens of Maryland and Virginia. Such has been the course of events, not because of any great design or far-seeing plan, but because it is the natural working of democratic government.

The incapacity of democracies to maintain policies of aggression may be fairly inferred from the extreme reluctance with which they incur the expense and make the sacrifices necessary for defense. Cherishing no secret designs of aggression themselves, they find it difficult to believe in the existence of such designs on the part of other nations. Only imminent and deadly peril awakens them to activity. It was this obstinate confidence in the peaceable intentions of all mankind which met Lord Roberts (honored, trusted and beloved as he was) when long before the present war he vainly sought to awaken the people of England to the danger that he saw so plainly in Germany's stupendous preparation for conquest. It is well known that when the

war came France was almost upon the verge of diminishing her army by a reduction in the years of service. In our own country a great people, virile, fearless, and loyal, have remained indifferent to all the voices crying in the wilderness for preparation, because the American people could not be made to believe that anything was going to happen inconsistent with the existence everywhere of those peaceful purposes of which they themselves were conscious.

There is a radical incompatibility between popular self-government and continuous military discipline, for military control is in itself despotic. As compared with military autocracies, the normal condition of democracies is a condition of inferior military efficiency. This invariable characteristic of democracy leaves it no option in its treatment of autocracy. The two kinds of government can not live permanently side by side. So long as military autocracy continues, democracy is not safe from attacks, which are certain to come some time, and certain to find it unprepared. The conflict is inevitable and universal; and it is *à l'outrance*. To be safe democracy must kill its enemy when it can and where it can. The world can not be half democratic and half autocratic. It must be all democratic or all Prussian. There can be no compromise. If it is all Prussian, there can be no real international law. If it is all democratic, international law honored and observed may well be expected as a natural development of the principles which make democratic self-government possible.

The democracies of the world are gathered about the last stronghold of autocracy, and engaged in the conflict thrust upon them by dynastic policy pursuing the ambition of rulers under claim of divine right for their own aggrandizement, their own glory, without regard to law or justice, or faith. The issue to-day and to-morrow may seem uncertain, but the end is not uncertain. No one knows how soon the end will come, or what dreadful suffering and sacrifice may stand between; but the progress of the great world movement that has doomed autocracy can not be turned back, or defeated.

That is the great peace movement.

There the millions who have learned under freedom to hope and aspire for better things are paying the price that the peaceful peoples of the earth may live in security under the protection of law based upon all embracing justice and supreme in the community of nations.

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